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

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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, March 27, 2023

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PRESENT: HON. LEON RUCHELSMAN Motion Seq. #4

The defendants Transport Workers Union Local 100, Anthony Utano, Aquillino Castro, Angella Fonte, and Ron Gregory move pursuant to CPLR §3211 seeking to dismiss the complaint on the grounds essentially the relief sought in the complaint is moot. The plaintiff opposes the motion. 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 because she did not have twelve months of continuous good standing as required by the Constitution. The plaintiff 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 complaint on the grounds there is no live controversy that can be litigated. First they argue the election already took place and thus there can be no relief pursuant to that past event. Moreover, they argue that the Department of Labor denied the plaintiff's appeal seeking post election relief and that consequently this lawsuit is foreclosed.

Specifically, the first cause of action alleges breach of contract against Local 100. The second and third causes of action allege intentional and negligent infliction of emotional distress against defendant Schwartz and Local 100. The fourth cause of action alleges negligent hiring against Local 100 and defendant Utano. The defendants assert the complaint is jurisdictionally improper and that in any event each cause of action fails to state any claim.

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 (Ripa v. Petrosyants, 203 AD3d 768, 160 NYS3d 658 [2d Dept., 2022]). Further, all the allegations in the complaint are

deemed true and all reasonable inferences may be drawn in favor of the plaintiff (BT Holdings, LLC v. Village of Chester, 189 AD3d 754, 137 NYS2d 458 [2d Dept., 2020]). 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, Redwood Property Holdings, LLC v. Christopher, 211 AD3d 758, 177 NYS3d 895 [2d Dept., 2022]).

On December 12, 2022 Tracy Shanker an officer of the enforcement division of the Department of Labor issued a letter to the plaintiff informing her that no violation of the constitution took place and further there was no violation of the Labor-Management Reporting and Disclosure Act. The letter stated that "the Department has concluded that there was no violation of the Act that may have affected the outcome of the election in connection with your allegations" (see, Letter Dated December 12, 2022 [NYSCEF Doc. No. 164]). Further, 29 USC §483 states that "the remedy provided by this subchapter for challenging an election already conducted shall be exclusive" (id, see, also, Trbovich v. United Mine Workers of America, 404 U.S. 528, 92 S.Ct 630, 30 Led2d 686 [1972]). The crux of plaintiff's entire complaint and the specific causes of action that flow therefrom all relate to an interpretation of the constitution and the relevant by-laws. The complaint does allege conduct by defendant

Schwartz which caused the plaintiff to suffer emotional distress (see, Verified Complaint, ¶¶51-56 [NYSCEF Doc. No. 1]). However, those allegations were made in the context of the dispute interpreting the relevant provisions as noted. Indeed, Paragraph 57 of the complaint states that "had Defendants properly interpreted Article XIII section 3 according to its language and plain meaning, Plaintiff Byars could not have been determined ineligible to run" (id). Thus, there are no allegations of unclean hands or other equitable concerns that demand a dismissal of the investigation of the Department of Labor (see, Marshall v. Local 1010, 664 F2d 144 [7th Cir. 1981]). Thus, when an election has already taken place such as in this case then the only remedy available to the plaintiff is to pursue claims with the Department of Labor. The plaintiff has pursued those claims and is consequently barred from asserting causes of action that must be exclusively resolved by the Department of Labor. Therefore, the motion seeking to dismiss the first cause of action is granted.

In Murray v. Amalgamated Transit Union, 206 F.Supp3d 202 [District of Columbia 2016] the court acknowledged that an exception to the exclusivity rules exist for claims that do not contest the election at all. Thus, "Title IV, and specifically § 483, divests federal courts of subject-matter jurisdiction to adjudicate claims brought after a completed union election that,

in substance, seek to challenge the election itself" (id). However, specific tort claims, unrelated to the election itself may be maintained in this court. A review of those claims is therefore necessary.

In Martin v. Curran, 303 NY 276, 101 NE2d 683 [1951] the court held that unincorporated associations cannot be the subject of any contract or tort claims unless it is alleged that each union member ratified the alleged improper conduct. That conclusion was based upon an interpretation of General Associations Law §13 whereby "the Legislature has limited such suits against association officers, whether for breaches of agreements or for tortious wrongs, to cases where the individual liability of every single member can be alleged and proven" (id). Although that decision has been criticized it was recently affirmed in 2014 when the Court of Appeals was presented with an opportunity to overrule it and declined to do so (see, Palladino v. CNY Centro Inc., 23 NY3d 140, 12 NE3d 436 [2014]).

The recent decision Agramonte v. Local 461, District Council 37 et al., 209 AD3d 478, 176 NYS3d 626 [1st Dept., 2022] merely confirmed the well established rules noted above and held that "the law is well settled that suits for breaches of agreements or for tortious wrongs against officers of unincorporated associations, including unions, are limited to situations in which 'the individual liability of every single member can be

alleged and proven'" (id). Thus, in an action seeking the intentional infliction of emotional distress against a union and others the court held such action was foreclosed since there was no allegation "that the individual members of the Union authorized or ratified the complained of conduct" (see, Walsh v. Torres-Lynch, 266 AD2d 817, 697 NYS2d 434 [4th Dept., 1999]). Therefore, the motion seeking to dismiss the second cause of action alleging intentional infliction of emotional distress is granted.

However, there are a few decisions that hold the pleading requirements of Martin v. Curran (supra) are not applicable to negligence actions (see, Piniewski v. Panepinto, 267 AD2d 1087, 701 NYS2d 215 [4th Dept., 1999], Grahame v. Rochester Teachers Association, 262 AD2d 963, 692 NYS2d 537 [4th Dept., 1999], Zanghi v. Laborers' International Union, 8 AD3d 1033, 778 NYS2d 607 [4th Dept., 2004], see, also, Leonel Cruz v. United Automobile Workers Union Local 2300, Footnote 17, 2019 WL 3239843 [N.D.N.Y. 2019]). The distinction between negligence and intentional torts in the context of the pleading requirements against unions can be traced to Torres v. Lacy, 5 Misc2d 11, 159 NYS2d 411 [Supreme Court New York County 1957]). In that case the plaintiff sued the defendant Lacey, the president of the union in negligence, specifically, for failing to take safety precautions at a party sponsored by the voluntary unincorporated

association. Lacey moved to dismiss the complaint on the grounds that "allegations of either ratification, consent or authorization by all of the members of the wrongful act" was absent. The court rejected that argument and held that if mere negligence actions required the ratification of all members then all such voluntary unincorporated associations would be "immune from liability for the negligence of such agents, even if acting in the interest of the association under the general principles of agency. The liability of a voluntary unincorporated association for the commission or omission of an unintentional wrong by its agent is solely governed by the general rules of agency. If it were necessary to plead membership ratification or authorization of an unintentional tort, other than alleging that the event was in furtherance of the association's existence, then an aggrieved party would be placed thereby in the position of pleading, in effect, a wilful or intentional wrong, substantially altering substantive rights which was not within the contemplation of Section 13 of the General Associations Law. The so-called right to recover from the actual wrongdoer is of no avail. Furthermore, such logic is contrary to the common law principles of agency in relation to responsibility. For Section 13 of the General Associations Law to be meaningful in this case, the test of sufficiency rests upon the inclusion of an allegation showing that the unintentional act of the defendant's agent

occurred in the course of performing an essential activity of the association and in furtherance of the existence of it, which is capable, on principles of agency, of binding all of its members" (id). The Appellate Division affirmed that determination (see, Torres v. Lacy, 3 AD2d 998, 163 NYS2d 451 [1st Dept., 1957]). While these decisions have been criticized for lacking any analysis (see, *Union Immunity from Suit in New York*, New York University Journal of Law and Business, by Mitchell Rubinstein Summer 2006) clearly a compelling distinction has been presented between negligence actions and intentional torts.

It is true that in Kreutzer v. East Islip Union Free School District, 2015 WL 9254522 [Supreme Court Suffolk County 2015] the court made no distinction between negligence and other actions and dismissed all actions, even negligence actions, against an unincorporated association. That conclusion was reached in part upon the fact the negligence claim was based upon the same facts and theories as a breach of contract claim and that "without identifying a legal duty separate and apart from the alleged contract itself that has been violated, these claims are not actionable" (id., Footnote 1). However, in Riordan v. Garces, 2019 WL 6878551 [Supreme Court New York County 2019] the court held that "to state a cause of action for an unintentional tort, including negligence and negligent hiring and retention, the plaintiff need not allege that the entire union membership

authorized or ratified the negligent conduct" (id).

Thus, a survey of cases that have addressed this issue reveal that other than one trial level case there is unanimity that the exclusivity requirements of Martin v. Curran (supra) do not apply to unintentional torts including negligent infliction of emotional distress and negligent hiring. Further, those negligence claims really are distinct from the more substantive claims concerning the interpretation of the by-laws and the constitution (*cf.* Kreutzer v. East Islip Union Free School District, supra).

Therefore, based on the foregoing, the motion seeking to dismiss the third and fourth causes of action is denied.

So ordered.

ENTER:

DATED: March 27, 2023
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC