

Ochiagha v Onwuachu

2012 NY Slip Op 32830(U)

November 27, 2012

Sup Ct, New York County

Docket Number: 103566/12

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SCARPULLA
Justice

PART 19

OCHIACHA, ROBERT U.,
ET AL.

INDEX NO.

103566/12

MOTION DATE

MOTION SEQ. NO.

01

MOTION CAL. NO.

- v -
FABIAN A. ODUWACHU,
ET AL.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that ~~this motion~~ this order to show cause
is determined in accordance with the accompanying
decision for do.

FILED

NOV 29 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/27/12

Paula Scarpulla
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X
ROBERT U. OCHIAGHA IN HIS CAPACITY AS
CHAIRMAN OF THE PEOPLES CLUB OF NIGERIA
INTERNATIONAL ("PCNI") NEW YORK CITY
BRANCH, INC., DR. RAYMOND UKWUOZO IN
HIS CAPACITY AS SECRETARY EMERITUS OF
THE PEOPLES CLUB OF NIGERIA
INTERNATIONAL ("PCNI") NEW YORK CITY
BRANCH, INC. AND PAUL ONYENAGADA,
MEMBER,

Index No.: 103566/12

Plaintiffs,

DECISION AND ORDER

-against-

FABIAN A. ONWUACHU, IN HIS CAPACITY AS
PRESIDENT OF PEOPLES CLUB OF NIGERIA
INTERNATIONAL, AND MORRIS EFOBI, CIIRIS
NWORJIH, LINUS EZE, JOHN ANUFORO,
SOLOMON NDUKA IN THEIR CAPACITIES AS
MEMBERS OF THE ALLEGED INTERIM CARE-
TAKER COMMITTEE OF THE PEOPLES CLUB
OF NIGERIA INTERNATIONAL ("PCNI") NEW
YORK CITY BRANCH, INC.,

Defendants.

FILED

NOV 29 2012

NEW YORK
COUNTY CLERK'S OFFICE

-----X
For Plaintiffs:
The Law Offices of Albert Van-Larc
80 Wall Street, 3rd Floor
New York, NY 10005

For Defendants Efobi, Eze, Nworjeh, Anuforo & Nduka:
Madu, Edozie & Madu, P.C.
1599 East Gunhill Road
Bronx, NY 10469

For Defendant Onwuachu:
Dan Martin, Esq.
108 Straube Center Blvd.
Pennington, NJ 08534

HON. SALIANN SCARPULLA, J.:

In this action seeking, *inter alia*, injunctive relief, plaintiffs Robert U. Ochiagha in his capacity as Chairman of The Peoples Club of Nigeria International (“PCNI”) New York City Branch, Inc., Dr. Raymond Ukwuozo in his capacity as Secretary Emeritus of The Peoples Club of Nigeria International (“PCNI”) New York City Branch, Inc. and Paul Onyenagada, Member (“plaintiffs”) move by order to show cause for the relief set forth in their complaint.

People’s Club of Nigeria International (“PCNI”) is a non-profit international organization with its main office in Nigeria, and branch offices all over the world. Defendant Fabian A. Onwuachu (“Onwuachu”) is PCNI’s president. In 2005, PCNI established a branch of its organization in New York (“PCNI-NY”). PCNI has a constitution which, among other things, provides that a “branch may have its own local rules and regulations and bylaws for easy and smooth running of the branch activities, but no provision of such rules and regulations shall derogate from or be repugnant to any of the provisions of the constitution. No local rules and regulations shall supersede the constitution.” PCNI-NY has its own bylaws.

In 2009, plaintiff Robert U. Ochiagha (“Ochiagha”) was elected chairman of PCNI-NY, plaintiff Raymond Ukwuozo was secretary, and plaintiff Paul Onyenagada was a member. By letter dated June 15, 2012, the PCNI Executive Committee informed Ochiagha that due to his continued violation of the PCNI constitution, rules and regulations, he must suspend any election of officers at PCNI-NY until the arrival of

certain delegates from PCNI to resolve any conflicts and issues. Ochiagha ignored the letter, and held an election on June 23, 2012. Ochiagha was re-elected as chairman. On June 30, 2012, Onwuachu wrote a letter to the plaintiffs informing them that they “grossly disobeyed” his directive. By letter dated July 7, 2012, Ochiagha informed Onwuachu that the election was not an act of disobedience. As a result of Ochiagha’s failure to abide by the Executive Committee’s directive, plaintiffs were suspended from PCNI-NY and a caretaker committee was elected by the Executive Committee on July 27, 2012. The caretaker committee was comprised of defendants Linus Eze as secretary, Morris Efobi as president, Chris Nworjih, John Anuforo and Solomon Nduka.

Plaintiffs then commenced this action, alleging that (1) Onwuachu did not have the authority to suspend the elections for PCNI-NY; (2) plaintiffs attempted to settle this matter with the defendants but defendants did not respond; (3) plaintiffs were not given notice before their suspension; (4) Onwuachu did not have the authority to suspend members of PCNI-NY; and (5) Onwuachu did not have the authority to elect a caretaker committee. Plaintiffs sought a judgment declaring that Onwuachu must recognize the PCNI-NY’s officers that were elected on June 23, 2012 as the legitimate officers and that Ochiagha is the chairman of PCNI-NY; a judgment declaring that the suspension of Ochiagha and Ukwuozo was unconstitutional and void; an injunction prohibiting Onwuachu and other officers from usurping the functions of the elected officers of PCNI-

NY; and a restraint preventing the caretaker committee from acting as leaders of PCNI-NY.

Plaintiffs now move by order to show cause seeking the relief set forth in their complaint. They maintain that PCNI-NY has been unable to function effectively since their suspension. On September 7, 2012, at oral argument on the order to show cause, this court limited the relief sought on this order to show cause to an injunction nullifying the election of the caretaker committee. The court directed the parties to address only the issues of jurisdiction and whether the business judgment rule precludes the court's intervention in this matter. The court also directed the plaintiffs to move the monies they put in escrow from New Jersey to New York.

A foreign corporation may be subject to personal jurisdiction under New York's long-arm statute, CPLR §302, which authorizes the court to exercise jurisdiction over non-domiciliaries or their agents for tort and contract claims arising from a defendant's transaction of business in this state. CPLR §302(a)(1) is a "single act" statute, and proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, as long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted. *See Firegreen, Ltd. v. Claxton*, 160 A.D.2d 409, 411 (1st Dept. 1990). In assessing long-arm jurisdiction, the court considers the totality of the circumstances. *See Multi-Modal Int'l v. Anglia N. Am., Inc.*, 227 A.D.2d 600 (2nd Dept. 1996); *Catauro v. Goldome Bank for Sav.*, 189 A.D.2d 747 (2nd Dept. 1993).

Here, by letter dated June 15, 2012, Onwuachu informed PCNI-NY that it must hold off on any elections until issues in the New York branch were resolved by “delegates from the headquarters who shall arrive USA soon.” Further, by letter dated June 30, 2012, Onwuachu informed Ochiagha that the elections held at PCNI-NY on June 23, 2012 were declared null and void. Finally, by letter dated July 28, 2012, Onwuachu informed all members of PCNI-NY that Ochiagha and Ukwuzo were suspended indefinitely and that a caretaker committee was appointed to oversee the affairs of PCNI-NY for six months. The court finds that these activities subject PCNI, through its agent Onwuachu, to the jurisdiction of this court. Onwuachu’s communications and actions taken with respect to Ochiagha and PCNI-NY were purposeful and there is a substantial relationship between those communications and actions and the claims asserted.

Further, the business judgment rule prohibits judicial inquiry into “actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes.” *Auerbach v. Bennett*, 47 N.Y.2d 619, 629 (1979). As long as the corporation's directors have not breached their fiduciary obligation to the corporation, the exercise of their powers for the common and general interests of the corporation may not be questioned, although the results show that what they did was unwise or inexpedient. *Levandusky v. One Fifth Ave. Apartment Corp.*, 75 N.Y.2d 530, 537-538 (1990). However, “it permits review of improper decisions, as when the challenger demonstrates that the board's action has no legitimate relationship to

the welfare of the cooperative, deliberately singles out individuals for harmful treatment, is taken without notice or consideration of the relevant facts, or is beyond the scope of the board's authority." *Levandusky v. One Fifth Ave. Apartment Corp.*, 75 N.Y.2d 530, 540 (1990). At this point in the action, the court does not find that the business judgment rule precludes its intervention because discovery has not yet been conducted, and there are allegations of bad faith on the part of the chairman of PCNI. *See generally 534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick*, 935 N.Y.S.2d 23 (1st Dept. 2011); *Bryan v. West 81 Street Owners Corp.*, 186 A.D.2d 514 (1st Dept. 1992).

However, a preliminary injunction may be granted under CPLR Article 63 only when the party seeking such relief demonstrates: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor. *See Doe v. Axelrod*, 73 N.Y.2d 748 (1988); *Amarant ex rel. Mercury Beach-Maid v. Antonio*, 197 A.D.2d 432 (1st Dept. 1993). A preliminary injunction is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and upon the relevant facts set forth in the moving papers. *McGuinn v. City of New York*, 219 A.D.2d 489 (1st Dept. 1995). The purpose of this interlocutory relief is not to finally determine the merits, but to preserve the status quo so that once a decision is reached on the merits, it would have a meaningful impact on the dispute. *See Moody v. Filipowski*, 146 A.D.2d 675, 678 (2nd Dept. 1989).

The court finds that plaintiffs have not submitted sufficient evidence to meet their burden of proving likelihood of success on the merits, the prospect of irreparable injury if the relief is withheld, or that the balance of equities tip in their favor.

In accordance with the foregoing, it is hereby

ORDERED that plaintiffs Robert U. Ochiagha in his capacity as Chairman of The Peoples Club of Nigeria International (“PCNI”) New York City Branch, Inc., Dr. Raymond Ukwuozo in his capacity as Secretary Emeritus of The Peoples Club of Nigeria International (“PCNI”) New York City Branch, Inc. and Paul Onyenagada, Member’s order to show cause for a preliminary injunction is denied; and it is further

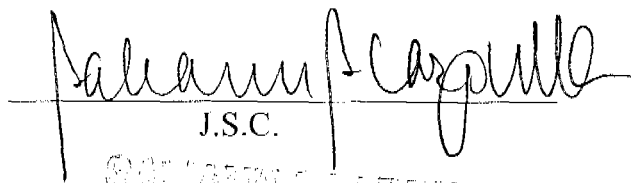
ORDERED that plaintiffs Robert U. Ochiagha in his capacity as Chairman of The Peoples Club of Nigeria International (“PCNI”) New York City Branch, Inc., Dr. Raymond Ukwuozo in his capacity as Secretary Emeritus of The Peoples Club of Nigeria International (“PCNI”) New York City Branch, Inc. and Paul Onyenagada, Member are directed to keep the money previously directed to be held in escrow in New York and said monies shall remain in New York until the resolution of this action or until further application by either party; and it is further

ORDERED that defendants Fabian A. Onwuachu, in his capacity as President of Peoples Club of Nigeria International, and Morris Efobi, Chris Nworjih, Linus Eze, John Anuforo, Solomon Nduka in their capacities as members of the alleged interim care-taker committee of the Peoples Club of Nigeria International (“PCNI”) New York City Branch,

Inc. are directed to serve an answer to the complaint within 20 days of the date of entry of this order and the parties shall appear for a preliminary conference in Part 19 on January 30, 2013 at 2:15 p.m. at 80 Centre Street, Room 279.

This constitutes the decision and order of the court.

Dated: New York, New York
November 27, 2012



J.S.C.
CLERK OF THE COURT

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