Dadey v Onondaga County Comm. of the Conservative Party of NYS
2023 NY Slip Op 34150(U)
November 30, 2023
Supreme Court, Onondaga County
Docket Number: Index No. 008366/2023
Judge: Joseph E. Lamendola
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STATE OF NEW YORK
SUPREME COURT ONONDAGA COUNTY

THOMAS V. DADEY, JR.,

Plaintiff,

v.

ONONDAGA COUNTY COMMITTEE OF THE CONSERVATIVE PARTY OF NYS and BERNARD MENT, Chairperson,

Defendants.

DECISION AND ORDER

Motions # 1 & 2

Index No: 008366/2023

Before: Hon. Joseph E. Lamendola, JSC

Plaintiff commenced this action against Defendants by filing a Verified Complaint on August 8, 2023, seeking declaratory judgment as to the parties' rights pursuant to the Bylaws, and a permanent injunction enjoining Defendants from pursuing removal proceedings against him. By Answer filed September 25, 2023, Defendants assert that Plaintiff has failed to state a cause of action, failed to exhaust all administrative remedies, and further that the controversy presently before the court is not ripe for judicial review.

By way of background, Plaintiff herein was elected by the Defendant Onondaga County Committee of the Conservative Party (hereinafter "County Committee") to an 'at large' seat on the Executive Committee on October 1, 2022. Pursuant to the Bylaws of the County Committee, an 'at large' seat carries with it the title of Vice-Chairman of the County Committee. (Bylaws Art. III, Section I) On July 18, 2023, the Executive Committee initiated a proceeding to remove the Plaintiff from the Executive Committee pursuant to Article II, Section 4 of the Bylaws. In accordance with the Bylaws, Plaintiff was served with written charges on or about July 22, 2023, and provided notice that a

hearing regarding the charges was scheduled for August 15, 2023, at which time he could set forth evidence in opposition to the charges. Plaintiff commenced the present action and filed an Order to Show Cause seeking a temporary restraining order enjoining Defendants from pursuing a removal hearing against the Plaintiff. On August 8, 2023, the Court signed the Order to Show Cause granting a preliminary injunction to maintain the status quo pending resolution of the underlying issues.

Currently pending before the Court is an Order to Show Cause filed by Plaintiff seeking a declaration of rights and the issuance of a permanent injunction. Defendants oppose such relief and filed a Cross-Motion seeking dismissal of Plaintiff's action for a lack of ripeness; pursuant to § 3211(a)(1) based upon documentary evidence; and/or § 3211(a)(7) for failure to state a cause of action.

The Court will first address the Cross-Motion brought by the Defendants as it is dispositive of a number of issues under consideration. Defendants argue in the first instance that there are no issues presently before the Court that are ripe or appropriate for judicial review. It is well settled that the function of the Court is to determine controversies, not provide advisory opinions. *Mtr of Town of Riverhead v. Central Pine Barrens Joint Planning & Policy Comm.*, 71 Ad3d 679 [2nd Dept., 2010]] "The ripeness doctrine and the related rule that there must be an actual controversy between genuine disputants with a stake in the outcome serve the same purpose: to conserve judicial machinery for problems which are real and present or imminent, not to squander it on abstract or hypothetical or remote problems." *Church of St. Paul & St. Andrew v. Barwick*, 67 NY2d 510, 518 [1986]

Where, as here, there is an allegation by Plaintiff that a constitutional harm has resulted from the application of the Defendants' Bylaws, the Court is required to engage in a two-part analysis to determine ripeness for judicial review: "first to determine whether the issues tendered are appropriate for judicial resolution, and second to assess the hardship to the parties if judicial relief is denied." *Id.*, 67 NY at 519, *citing Abbott Labs v. Gardner, et al.*, 387 US 136, 162 [1967]

The first prong of the inquiry, "appropriateness" addresses whether the action under review is final and may be determined as a 'purely legal' question. *Id.* In doing so, the Court must evaluate whether the "decision-maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury." *Id.*

Article II, Section 4 of the Bylaws states that:

> "A member or office of a committee may be removed by such Committee for disloyalty to the party or corruption in office after notice is given and a hearing upon written charges has been had. The hearing shall be held by the committee, or a subcommittee thereof appointed for that purpose, which committee shall report its findings to the full committee.

On July 18, 2023, at a regularly scheduled monthly meeting of the Executive Committee, Executive Committee members Beaulieu and Marzullo advised Plaintiff and the other committee members that they were charging Plaintiff with corruption in office pursuant to Article 11, Section 4. (NYSCEF #20, paragraphs 6-7) The specific allegation of corruption being charged was that Plaintiff had conspired with others to place the names of Beaulieu and Marzullo on nominating petitions which were then circulated to voters without the knowledge or consent of either party. (Id., paragraph 8) A written copy of the charges were mailed to Plaintiff on July 22, 2023, together with a notice that a hearing would be held at the next scheduled Executive Committee meeting

on August 15, 2023. (Id., paragraph 10; NYSCEF #23, Ex. B). In the written charges served upon Plaintiff he was advised that there were two charges for corruption in office being pursued: 1) fraud committed against registered voters in the 127th Assembly District as a result of Plaintiff's involvement in distributing for signatures nominating petitions for the judicial district convention by improperly placing the names of three individuals without their permission; and 2) for his role in initiating a 'meritless and frivolous' complaint with the NYS Board of Elections against Beaulieu which subjected him needlessly to a criminal investigation.

Defendants' actions thus far appear to comport with the mandates of Article II, Section 4 of the Bylaws. Plaintiff argues that there are constitutional impairments to these actions, to wit: that the Executive Committee lacks the authority to conduct the hearing, and the violation of Plaintiff's right to fundamental due process.

First, Plaintiff argues that the Executive Committee herein does not have the authority to remove an officer, nor does the County Committee have the authority to delegate that power to the Executive Committee. In support of that position, Plaintiff cites *Samuel v. Rodriguez*, 120 Misc2d 964 [1983] for the proposition that the power "to remove a party officer...does not emanate from the internal rules of the party, but rather was created by the legislature," and therefore an officer can only be removed pursuant to Election Law §2-116. What Plaintiff fails to address in this argument, is that the removal at issue in *Samuel v. Rodriguez*, was undertaken by the **Executive Committee** with which the Court took no issue. *Id.*, 120 Misc2d at 965.

The import in *Samuel v. Rodriguez* of setting forth that the right to remove a party is not created by party rules, was that "inasmuch as the right to oust from party office an

individual who has been duly elected thereto, is a right created by the Legislature, *it is an appropriate function of the Court to determine whether the grounds for removal provided in the statute have been met." Id.,* 120 Misc2d at 966. The Court was merely noting that because the right of removal was created by the Legislature, it was within the Court's function to review such removal determinations to ensure that "a single aberration by a party office holder" was not characterized as "disloyalty to party warranting expulsion." *Id.* Plaintiff's argument is contradicted by the facts set forth *Samuel v. Rodriguez*.

Plaintiff further argues that Election Law §2-116 dictates that an officer of a party committee may only be removed by "such" committee, and therefore because it does not specifically provide for delegation, delegation must be prohibited. While Plaintiff is correct in asserting that the power of an executive committee is not unfettered:

> "[g]enerally, courts will not interfere with the internal affairs of a political party… Indeed, the United States Supreme Court noted that a political party has "discretion" in how to organize itself, conduct its affairs, and select its leaders. ..Thus, "absent inconsistent statutory directives, the duly adopted rules of a political party should be given effect."
> *Mtr of Master v. Pohanka*, 10 NY3d 620, 624 [2008] (*citing Mtr of Kahler v. McNab*, 48 NY2d 917 [1983]

Election Law §2-116 contains no provision which prohibits the County Committee from delegating to the Executive Committee the power to conduct a removal hearing, rather it is silent on the issue. Silence is not a directive.

Article IV, Section 3 of the Bylaws provides in pertinent part, "[a]t all times when the County Committee is not actually in session, the Executive Committee shall have, possess and exercise all the rights, privileges, powers and duties which the County Committee may have, possess, and exercise." There being no statutory directive to the

contrary, the County Committee may delegate its power to conduct a removal hearing to the Executive Committee when the County Committee is not in session.

Additionally, both Election Law §2-116 and Bylaws Article II, Section 4, provide that a member or officer of a committee "may be removed by such Committee." However, Article III, Section I, sets forth that "the County Committee shall elect…members-at-large **of the Executive Committee**…[who] will assume the title of Vice-Chairman of the…County Committee." Plaintiff was therefore **elected** to the Executive Committee. Therefore, to remove Plaintiff from his elected position on the Executive Committee, "such committee" charged with the removal hearing pursuant to both Election Law and the Bylaws would be the Executive Committee. The Executive Committee is the proper committee to hold the removal hearing herein. *See also, Samuel v. Rodriguez*, 120 Misc2d 964, 965 [NY Cty Sup Ct, 1983]

Plaintiff next argues that the charges and/or hearing as presently set forth violate his fundamental due process rights by 1) failing to provide fair notice of the proscribed conduct, i.e., 'disloyalty'; and 2) allowing Chairman Ment to preside over the hearing as Plaintiff believes that Chairman Ment drafted, produced and distributed the petitions underlying Plaintiff's charges. Plaintiff's arguments with respect to the constitutionality of defining proscribed conduct as "disloyalty to party" both misstate the law and are inapplicable to the present controversy.

> "Section 16 of the Election Law permits a committee to purge its ranks of those disloyal to the party. The Legislature has not attempted to define disloyalty to party and for the very good reason that party loyalty lacks definition. Honest differences of opinion…should not be characterized as disloyalty…
> This section authorizes these committees, after notice and in the manner provided therein, to hear accusations of disloyalty and if substantiates, to

> remove a disloyal member from the party committee." *Bajak v. Democratic County Committee*, 35 Misc2d 1034, 1036, 1038 [Erie Cty Sup Ct., 1962]

Plaintiff's argument that he is deprived of fair notice because the Bylaws fails to define "disloyalty" is disingenuous both because he is not charged with "disloyalty," and because there is no requirement that disloyalty be defined.

Lastly, Plaintiff argues that to allow Chairman Ment to preside over the hearing and/or to sit in judgment would be an "affront" to due process as it is Plaintiff's belief that the petition, which is the basis for one of the corruption charges, was drafted, produced and distributed by Chairman Ment. Such argument is both premature and undeveloped. As the hearing has yet to be held, this Court has no way of knowing for example: what proof will be adduced; what Mr. Ment's role, if any, was in the petitions at issue; whether Mr. Ment will preside over the hearing or have someone else preside in his stead; whether Mr. Ment will vote at the hearing; etc.

Applying the foregoing to this Court's ripeness analysis, Plaintiff's action does not satisfy the first prong of the inquiry, "appropriateness." The Defendants' action of formally charging and providing notice of a hearing date at which Plaintiff may defend himself cannot be viewed as either "final" nor a 'purely legal' question. *Church of St. Paul & St. Andrew v. Barwick*, 67 NY2d 510, 518 [1986] Factual issues exist which must be fleshed out in the fact-finding hearing that Defendants had scheduled on notice to the Plaintiff and therefore the present matter is not ripe for judicial review. As there is no constitutional impediment to the removal hearing, Plaintiff has not established a concrete injury that would ensue should the hearing proceed.

As the matter is not ripe for judicial review, Defendants motion to dismiss must be granted. The Court need not address the remainder of the arguments as such are moot.

Accordingly, it is hereby

ORDERED, that Defendants' motion to dismiss is **GRANTED** and plaintiff's complaint is dismissed as not ripe for judicial review.

DATED: November 30, 2023
Syracuse, New York

HON. JOSEPH E. LAMENDOLA, JSC

PAPERS CONSIDERED:

1. Order to Show Cause, executed August 11, 2023 (NYSCEF #10)
2. Affirmation in Support, filed August 8, 2023 (NYSCEF #4)
3. 22 NYCRR 202.8 Affirmation, filed August 8, 2023 (NYSCEF #5)
4. Supplemental Affirmation, filed August 15, 2023 (NYSCEF #12)
5. Notice of Cross-Motion, filed September 25, 2023 (NYSCEF #18)
6. Affirmation in Opposition to OTSC and in Support of Cross-Motion, filed September 23, 2023 (NYSCEF #19)
7. Ment Affidavit with Exhibit, filed September 25, 2023 (NYSCEF #20-21)
8. Memorandum of Law, filed September 25, 2023 (NYSCEF #22)
9. Affirmation in Opposition of Cross-Motion, filed September 29, 2023 (NYSCEF #23)