

STATE OF NEW HAMPSHIRE

CARROLL

SUPERIOR COURT

VIRGINIA M. MOONEY

V.

PROPERTY OWNERS ASSOCIATION AT SUISSEVALE, INC.

212-2020-CV-00072

**ORDER ON PLAINTIFF'S PETITION FOR PERMANENT INJUNCTION AND  
DEFENDANT'S MOTION TO DISMISS**

Plaintiff, Virginia Mooney, brought this action against Defendant, Property Owners Association at Suissevale, Inc., on April 24, 2020. See Pet. Inj. (Doc. 1). Plaintiff seeks a permanent injunction requiring Defendant to reinstate her to the Suissevale Board of Directors (the "Board") and to include her name on the ballot for the upcoming officer election. Id. Prayer A–B. Plaintiff also requests costs incurred as a result of this litigation. Id. Prayer C. Defendant moved to dismiss the petition. See Mot. Dismiss (Doc. 11). Pursuant to current New Hampshire Supreme Court policies, the Court held a telephonic hearing on the merits of the Petition on May 1, 2020. For the following reasons, Plaintiff's petition for permanent injunction is **DENIED** to the extent that it is not **MOOT**. Likewise, Defendant's motion to dismiss is **GRANTED** to the extent that it is not **MOOT**.

**FACTS**

The following facts are derived from Plaintiff's petition and the parties' representations at the May 1 hearing. In January of this year, Plaintiff filed a lawsuit against Defendant concerning the public availability of voter checklists after elections for open positions on the Board. See Mooney v. Prop. Owners Assoc. at Suissevale, Inc., Carroll County Superior Court, docket

number 212-2020-CV-00004; see also Doc. 1 ¶¶ 5–6. The facts of that case are related to the issues presented here and are hereby incorporated by reference. At the time she filed the lawsuit, Plaintiff was a member of the Board of Directors. Id. After she filed the lawsuit, the Board removed Plaintiff from her position. Doc. 1 ¶ 7. Thereafter, Plaintiff completed the nomination process to be re-elected to the Board of Directors and promptly filed her nomination papers. Id. ¶ 11. After filing the papers, the Board of Directors informed Plaintiff that her name would not be included on the ballot because of the pending lawsuit referenced above. Id. ¶12. Plaintiff was informed that her name would not be included on the ballot because the above referenced lawsuit “continue[d] to exist,” and as a result “the good cause related to [her] removal” was still in effect. See id. Ex. A. In response to that decision, Plaintiff filed the present action requesting she be reinstated as a Board member and be included on the upcoming ballot for re-election. Id. ¶¶ 25–32.

The Court held a hearing on May 1, 2020. At the hearing, Plaintiff represented that she was removed from the ballot specifically because of the pending lawsuit in docket number 212-2020-CV-00004. Defendant represented that Plaintiff was removed from the Board for “good cause” and that she would not be listed on the ballot because the “good cause” still existed, that being Plaintiff decision to file a “frivolous” lawsuit in docket number 212-2020-CV-00004. The Defendant further represented that Plaintiff would be kept off the ballot “only until this petition is resolved.” 05/01/2020 Hr’g at 3:34:25.

#### LEGAL STANDARD

“The issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy.” ATV Watch v. N.H. Dep’t of Res. and Econ. Dev., 155 N.H. 434, 437 (2007). “A party seeking an injunction must show, among other things, that it would likely

succeed on the merits.” DuPont v. Nashua Police Dep’t, 167 N.H. 429, 434 (2015) (quotation omitted). In addition to success on the merits, “[a]n injunction should not issue unless there is an immediate danger of irreparable harm to the party seeking injunctive relief, [and] there is no adequate remedy at law.” Pike v. Deutsche Bank Nat’l Trust Co., 168 N.H. 40, 45 (2015) (quotation omitted). “The trial court retains the discretion to decide whether to grant an injunction after consideration of the facts and established principles of equity.” Id.

### ANALYSIS

Plaintiff brought this law suit seeking: (1) to be reinstated to the Board of Directors, and (2) to be included on the upcoming election ballot. See Doc. 1. Plaintiff argues that she was removed from the Board in bad faith and that the decision to keep her from the ballot was “capricious” and outside the scope of the Board’s authority. Id. ¶¶ 26, 29–32. Defendant argued at the May 1 hearing that the Board of Directors did not act in bad faith or capriciously because Plaintiff was removed for “good cause.” Defendant further argues that the same authority that allows it to remove members from the Board grants it the authority to preclude members from being listed on officer election ballots, and that they had “good cause” to do so in this case. Doc. 11 ¶ 5.

As an initial matter, Defendant has already represented that Plaintiff will be allowed on the ballot “once [the declaratory judgment] petition is resolved.” The Court today also issues an Order granting Defendant’s motion to dismiss in docket number 212-2020-CV-00004. As a result, the petition for declaratory judgment is now resolved. Consequently, Defendant’s stated grounds for removing Plaintiff from the ballot will no longer exist. The Court presumes that, consistent with Defendant’s representations at the May 1 hearing, Plaintiff will be included on the upcoming officer election ballot. As a result the Court finds that Plaintiff’s petition for

injunction is **MOOT** to the extent she requests to be included on the officer election ballot. Thus, the only issue that remains is whether the Board acted within the scope of its authority in removing Plaintiff from the Board of Directors.

Suissevale is organized under RSA 292 and is therefore governed by the by-laws of the corporation. See RSA 292:6. Article III, Section 10 of the Suissevale by-laws provides:

Any director may be removed only for good cause at any time by the affirmative vote of members holding of record in the aggregate at least a majority of the votes of the Corporation at a special meeting of the members called for that purpose, and may be removed for good cause by action of the Board.

Doc. 10, Ex. A at 5. The by-laws do not further define “good cause” as it pertains to this or any other provision of the corporate documents. Defendant argues that the interpretation of “good cause” is best left to the judgment of the Board of Directors because the Court does not have the authority to “intrude upon the association’s internal affairs.” Id. ¶ 6 (quoting Brzica v. Trs. of Dartmouth Coll., 147 N.H. 433, 456 (2002)).

“Judicial interference in the internal affairs of associations is strictly limited and will not be undertaken in the absence of a showing of injustice or illegal action and resulting damage to the complaining member.” Brzica, 147 N.H. at 156 (quoting Bricker v. N.H. Med. Soc’y, 110 N.H. 469, 470 (1970)). “As to all questions of policy, discipline, internal government, and custom, the legal tribunals must accept as binding the decision of the regularly constituted judicatories of the church, fraternity, association, or society.” Id. (quotation and brackets omitted). Where a plaintiff does not state “any logical reason for the interference . . . by the courts in the internal affairs of the [association]” it is inappropriate for courts to intervene. Id.

At the May 1 hearing, Plaintiff argued that the Court must intervene because she had a sound legal basis for bringing her original claim in docket number 212-2020-CV-00004, and thus the Board acted capriciously in removing her. Defendant argues that there was no sound legal

basis for the original lawsuit, and that Plaintiff's initiation of a "frivolous civil suit" constituted good cause to remove her from the Board. Doc. 10 ¶ 5. Defendant further argues that Plaintiff's dissatisfaction with the Board's decision does not satisfy the "threshold necessary to intrude upon [Suissevale's] internal affairs." *Id.* ¶ 6 (quoting *Brzica*, 147 N.H. at 156). The Court agrees.

As the *Brzica* court held, injustice or illegal action on the part of the Board of Directors would be grounds for the Court to intrude upon the association's internal governance. 147 N.H. at 470 (noting that in order for the trial court to involve itself in the dispute, "it must find injustice or illegal action"). As more fully set forth in the Order dated June 1, 2020 in docket number 212-2020-CV-00004, in which the Court dismissed Plaintiff's petition for declaratory judgment against Defendant, the Court finds no unjust or illegal action taken by the Board. All parties agree that as a result of the petition for declaratory judgment, the Board removed Plaintiff from her position. Under these circumstances, the Board of Directors' removal of Plaintiff was not inherently unjust, nor has Plaintiff alleged that the Board of Directors violated specific laws or one of Suissevale's by-laws. The Court therefore finds that Plaintiff has failed to establish that the Board engaged in any illegal or unjust practice. Consequently, the Court is without authority to intrude on or interfere with the internal policies, discipline or governance of the corporation.

Because Plaintiff's petition fails on the merits, the Court need not analyze whether Plaintiff would suffer irreparable harm or whether there is an adequate remedy of law. *Cf. Cauty v. Hopkins*, 146 N.H. 151, 156 (2001) (holding that courts need not consider the party's remaining arguments where one or more is dispositive of the case). Accordingly, the Court

**DENIES** Plaintiff's petition and **GRANTS** Defendant's motion to dismiss to the extent they pertain to Plaintiff's reinstatement to the Board of Directors.

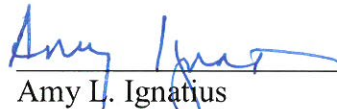
Finally, the Court acknowledges that Plaintiff and Defendant have incurred legal expenses in litigating this matter. Plaintiff has requested attorney's fees. Because Plaintiff's petition fails on the merits, the Court sees no basis to consider this request. Accordingly, Plaintiff's request for fees is **DENIED**.

CONCLUSION

Consistent with the foregoing, Plaintiff's petition for permanent injunction is **DENIED** to the extent it is not **MOOT**. Likewise, Defendant's motion to dismiss is **GRANTED** to the extent it is not **MOOT**.

So Ordered.

June 1, 2020

  
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Amy L. Ignatius  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 06/03/2020