

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-021952

11/14/2024

HONORABLE FRANK W. MOSKOWITZ

CLERK OF THE COURT
S. Motzer
Deputy

CARRIE COX, et al.

TIMOTHY A LASOTA

v.

BOB GOMEZ, et al.

CHARLES R JOHNSON

BRYAN JAMES BLEHM
JUDGE MOSKOWITZ

UNDER ADVISEMENT RULING

Having considered the witnesses' sworn trial testimony and the admitted Exhibits, as well as taking judicial notice of the Court's prior rulings in this case and in *Czarny v. Maricopa County Republican Party Committee and Craig Berland*, CV2023-004799 ("Czarny").

THE COURT FINDS AS FOLLOWS:

Jurisdiction.

This Court has jurisdiction to determine who is the Chair of the Republican Party in LD3 ("the LD3 Chair"). Competing notices have been sent out for the Republican Party in LD3's 2024 organizational meeting. The notices call for the meeting to occur on different dates and have been sent by two different people claiming to be the LD3 Chair – Michelle Rugloski and Candace Czarny. However, only one person can be the LD3 Chair and call the meeting pursuant to A.R.S. §16-823(H). Thus, one of the notices was sent in violation of that statute, which is why this Court has jurisdiction to determine who is the LD3 Chair and address the internal affairs of a political party.

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Res Judicata/Claims Preclusion.

Plaintiffs' claim is not barred by *res judicata*/claims preclusion. There is evidence for and against finding privity between the Plaintiffs in this case and the Plaintiff in *Czarny*. But even if the evidence supported a finding of privity, Plaintiffs' claim was not and could not have been decided in *Czarny*. See *Norriega v. Machado*, 179 Ariz. 348, 351 (App. 1994) (stating that "[r]es judicata binds parties standing in the same capacity in subsequent litigation on every issue decided in the prior action as well as on every issue that could have been decided."). As set forth in this Court's prior rulings on the Defendants' Motion and Amended Motion to Dismiss, Plaintiffs' claim was not decided in *Czarny*. Plaintiffs' claim was also not ripe and could not have been decided until competing notices for the 2024 organization meeting were issued pursuant to A.R.S. § 16-823(H). That did not happen until recently, well after the final judgment in *Czarny* was entered.

Collateral Estoppel/Issue Preclusion.

The issue before the Court is not the same issue that was actually litigated and decided in *Czarny*. The issue that was actually litigated and decided and essential to the Judgment in *Czarny* was that the election held at the March 30, 2023 meeting ("the March meeting") did not violate a controlling Arizona statute, namely §16-823(C). In reaching that conclusion, the Court also determined that the Arizona legislature did not vest this Court with jurisdiction to resolve a contest to an election held at an organizational meeting held pursuant to §16-823(C). The legislature left that for the political parties to resolve. The issue presented at trial is not for this Court to decide an election contest to the organizational meeting held on December 1, 2022 ("the December meeting"), but to decide whether there was an election challenge and a resolution of that challenge consistent with applicable bylaws. And, as explained below, there was both an election challenge and a resolution of that challenge consistent with applicable bylaws.

The Timely Written Challenge and MCRC's Resolution of that Challenge.

The Maricopa County Republican Party Committee ("MCRC") has bylaws that were originally adopted back in 1950 and have since been amended. Article IX, Section 2 provides:

Districts shall adopt Bylaws for their districts so long as the Bylaws are not in conflict with these Bylaws, or the laws of the State of Arizona. Any subject not directly covered by District Bylaws shall be governed by State Bylaws, County Bylaws, or the most current edition of Robert's Rules of Order Newly Revised.

[See Plaintiffs' Exhibit 12]

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Article II, Section 4(F) provides:

A written challenge to a District abiding by the required objectives of its Organizational Meeting must be received by the County Chairman or member of the EGC Executive Board no later than three days following the first Saturday in December.

[*See id.*]

Both sides agree that the December 6, 2022 email from Carrol Torkko was a timely written challenge made pursuant to Section 4(F), but disagree about whether it included a challenge to the election of officers or was simply a challenge to the election of state committeemen at the December 1, 2022 organizational meeting (“the 2022 organizational meeting”). Ms. Torkko’s email provides in pertinent part:

This written request is submitted pursuant to the MCRC Bylaws ARTICLE 1, SECTION 2 which gives the EGC the authority to rule on Legislative District matters and ARTICLE II SECTON F which permits a timely challenge. I am joined in this request for assistance from the EGC by Glenn Reinier, and Hal McCall. Their statements are attached.

Legislative District 3 held its *election* meeting on December 1, 2022, *for the purpose of electing district officers and state committeemen*. I was a candidate running for state committeeman and I lost by 1 vote.

I am requesting a challenge of *the election* for a recount of the ballots and canvas of the proxies because the Official Call Letter Rules #4 and #5 were in violation per the December 1, 2022 organizational meeting rules. We are requesting that a hearing before the entire MCRC Board consisting of all elected District Chairs and members at large. We further request that *the newly elected* and recent past *Chair of District 3 or any office of LD3 that is a member of the County Board be exempt from participating in this hearing as voting members to avoid any apparent conflict of interest*. Further, we request that any decision by the Board be by secret ballot.

[*See* Plaintiffs’ Exhibit 10, emphasis added]

Ms. Torkko testified that her challenge was to both the election of officers and state committeemen and that the attachment to her email further supports that contention. Plaintiffs’

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witness Cathy Schwanke also testified that it was her understanding that there were challenges to both the election of officers and state committeemen. There is contrary evidence that others, including former MCRC Chair Mickie Niland, narrowly construed the scope of the challenge as only against the election of state committeemen. [See Plaintiffs' Exhibits 5 and 6] However, there is impeaching evidence that during the December 12, 2022 EGC Executive Board Meeting, the subject of Plaintiffs' Exhibit 5, Ms. Niland moved to conduct an election in LD3 "the same" as the one conducted in LD11, which involved a new election of both officers and state committeemen. [See Plaintiffs' Exhibit 6; Defendants' Exhibit 23]

Also, an Emergency LD3 Board Meeting was held on December 17, 2022. According to the Draft Minutes of that Meeting, Ms. Czarny, acting as Chair, called the meeting to Order. Mr. Kevin Maldonado, the Treasurer, "moved to call for a credentialed special/organizational meeting to be held on Wednesday December 28, 2022 at 7 p.m., credentialing starting at 6 pm for the body *to vote for a redo of the officers and state committeemen* and then hold that revote election immediately following said vote." (emphasis added). Mr. Maldonado's motion was "Seconded" and "approved by three-fifths vote." Ms. Czarny then moved to adjourn the meeting, which was "Seconded and not approved due to no vote. [She] and Jamie Alford [then] left the meeting." [See Defendants' Exhibit 7]

On this record, there was a timely written challenge presented to the MCRC as to the election of officers and state committeemen at the December meeting.

Plaintiffs argue, however, that Article, 1 Section 2 of the MCRC bylaws limits the MCRC's authority to "rule on any question brought before it from a MCRC member concerning the interpretation of county or legislative district bylaws." [See Plaintiffs' Exhibit 12] While that language is included in Section 2, there is nothing in that Section that limits or restricts MCRC's authority to resolve a timely written challenge made pursuant to Section 4(F). And, more importantly, if the MCRC did not have authority to resolve such a challenge, then Section 4(F) would have no meaning and be superfluous.¹

¹ Cf. *Allergia, Inc. v. Bouboulis*, 229 F. Supp. 3d 1150, 1157, n. 4 (S.D. Cal. 2017) (stating that "[i]t is generally accepted that corporate bylaws are to be construed according to the general rules governing the construction of statutes and contracts. Bylaws must be given a reasonable construction and, when reasonably susceptible thereof, they should be given a construction which will sustain their validity..."); *Rawcliffe v. Anciaux*, 416 P.3d 362, 373 (Utah 2017) (stating that "[w]e interpret the governing documents of a corporation the same way we interpret a contract.... "In interpreting a contract, [w]e look to the writing itself to ascertain the parties' intentions, and we consider each contract provision ... in relation to all of the others, with a view toward giving effect to all and ignoring none." ... While interpreting such a document, we look first to "the plain language of its text.") (citations omitted).

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The Court also understands that the written challenge provision is included in Section 4, which deals with the District Chairman. Section 5 of the MCRC's bylaws deals with Other Elected District Offices, but does not have a separate written challenge provision. That, however, is not dispositive. The language of Section 4(F) controls and is broad enough to include a timely written challenge to the election of all officers because the election of all officers is one of the "required objectives" of the organizational meeting. *See* § 16-823(C). The Court chooses not to put form over substance when interpreting the MCRC bylaws.

Plaintiffs then argue that even if the MCRC had the authority to resolve the timely written challenge, they had no authority under the MCRC or LD3 bylaws to call the March meeting. Defendants maintain that they had the authority to call the March meeting as a Special Meeting to resolve the challenge. MCRC's bylaws recognize the calling of a Special Meeting, and no evidence was presented that calling the March meeting violated MCRC's bylaws. Defendants further maintain that the body had the opportunity at the March meeting to reject the agenda for that meeting, and if that would have happened, the meeting would have ended and Ms. Czarny would have remained LD3 Chair. Of course, that did not happen. The body approved the agenda for the March meeting and then voted for a new slate of officers, with the exception of Mr. Maldonado who was re-elected as Treasurer.

Plaintiffs then argue that the only Special Meeting that could have been called was pursuant to Article VI, Section 6 of the LD3 bylaws and that was not done. The LD3 bylaws, however, do not apply to the timely written challenge. That challenge was within the exclusive province of the MCRC bylaws. [*See* Plaintiffs' Exhibits 11 and 12] Defendants also refer the Court to the vote that was taken and what followed at the Emergency Board Meeting held on December 17, 2022. [*See* Defendant's Exhibit 7] Mr. Craig Berland, who replaced Ms. Niland as MCRC Chair in January of 2023, also testified that as of February 9, 2023, the challenge was still unresolved and Ms. Czarny was not cooperating with him in violation of the LD3 and MCRC bylaws. [*See* Plaintiffs' Exhibits 11 and 12; Defendants' Exhibit 9] The Court, in equity and good conscious, will not strictly hold MCRC to bylaws that Ms. Czarny herself was not following.

Plaintiffs then argue that Defendants remedy for Ms. Czarny's failure to cooperate was to seek her removal as LD3 Chair under the bylaws. However, the MCRC was tasked with resolving the timely written challenge, not the removal of Ms. Czarny as Chair.

Plaintiffs then argue that appointed PCs were allowed to vote at the March meeting and that is not an allowed practice at an organizational meeting. Defendants respond by pointing out that the March meeting was not an organizational meeting. And, this Court previously found in *Czarny* that the March meeting was not an organizational meeting and did not violate §16-823(C), the controlling statute on organizational meetings.

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On this record, the MCRC did not violate its bylaws by resolving the timely written challenge to the election of officers and state committeemen at the December meeting. The MCRC had the authority to address and resolve the timely written challenge, and that resolution led to Bob Gomez becoming the duly elected LD3 Chair. However, for the reasons testified to at trial, Michelle Rugloski is now the acting LD3Chair in his place.

IT IS THEREFORE ORDERED that Michelle Rugloski is the LD3 Chair.

The Court is certain that this ruling will come as a disappointing resolution for *some*, but a much-needed resolution for *all* to a political storm that hit the Republican Party in LD3 after the 2022 organizational meeting.

Plaintiffs' claim was neither frivolous nor brought without substantial justification; thus, this Court denies any requests for attorneys' fees under Rule 11, Ariz. R. Civ. P. or § 12-349, but awards Defendants their taxable costs, a Statement of which along with a proposed form of Judgment shall be filed by Defendants **no later than 5:00 p.m. on November 18, 2024.**