SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

JOY ELAINE DALEY, *et al.*,	:	
	:	
Plaintiffs,	:	**2009 CA 4456 B**
	:	**Judge Todd E. Edelman**
v.	:	
	:	
ALPHA KAPPA ALPHA SORORITY, INC., *et al.*,	:	
	:	
	:	
Defendants.	:	

ORDER

This matter is before the Court on a motion by Defendants Alpha Kappa Alpha Sorority, Inc. (hereinafter "AKA") and all individual Defendants named in the Second Amended Complaint except Barbara McKinzie (hereinafter "Defendants")[1]; the motion was filed on August 1, 2012 and is titled "Defendants' Motion for Partial Summary Judgment to Dismiss Plaintifff's [sic] Demand for Reinstatement and Injunctive Relief" (hereinafter "Defendants' Motion"). Plaintiffs[2] filed their Opposition on October 26, 2012. Defendants filed their Reply to Plaintiffs' Opposition on November 2, 2012.

I. Background

Plaintiffs, former members of AKA, filed their initial Complaint on June 20, 2009 and a First Amended Complaint on August 13, 2009. The Honorable Natalia Combs-Greene dismissed all of Plaintiffs' claims on February 1, 2010 because the Court determined that it could not

[1] These individual Defendants are: Carolyn House Stewart, Melanie C. Jones, Dorothy Buckhanan Wilson, Freddie Groomes-McLendon, Glenda Glover, Shayla M. Johnson, Noel Marie Niles, Pamela Bates Porch, Lavern Tarkington, Schylbea J. Hopkins, Norma Tucker, Evelyn Sample-Oates, Ella Springs Jones, Gwendolyn Brinkley, Juanita Sims Doty, Tari Bradford, Betty Nolan James, E. LaVonne Lewis, Ranika Sanchez, Adria Robinson, and Shaylyn Cochran.

[2] Plaintiffs are: Joy Elaine Daley, Kezira Means Vaughters, Carol P. Ray, Elizabeth Berry Holmes, Catherine Alicia Georges, Marie L. Cameron, Brenda Georges, and Frances Tyus.

exercise personal jurisdiction over any Defendant but AKA, that the only Plaintiff with standing was Joy Elaine Daley, and that Daley's claims for corporate waste, ultra vires, and breach of contract each failed to state a claim upon which relief may be granted. The Court of Appeals reversed most of Judge Combs-Greene's ruling on September 20, 2011, reinstating the suit with respect to all Plaintiffs and with respect to AKA and all named Defendants and remanding the case to the Superior Court for further proceedings. *See Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723 (D.C. 2011). Plaintiffs filed their Second Amended Complaint on November 23, 2011 (hereinafter "Plaintiffs' Second Amended Complaint").

Until shortly after they filed their initial Complaint, Plaintiffs were members of AKA, the nation's first sorority established by black women. (Pls.' 2d Am. Compl., ¶¶ 4-11, 36). The Second Amended Complaint alleges that Defendants are AKA members and, during the times relevant to this lawsuit, were members of AKA's "Directorate," the sorority's executive board. *Id.* at ¶¶ 14-35. AKA, a private, nonprofit corporation organized under District of Columbia law, operates pursuant to its Constitution and Bylaws, which set forth the duties of the members and directors of AKA. *Id.* at ¶¶ 12, 47-57. AKA operates according to a two-tiered governance structure; the principal governing body is the "Boule," which is comprised of all financially active members, while the Directorate consists of eighteen elected members and "is authorized to execute those actions approved by the Boule." *Daley*, 26 A.3d at 726. The Boule approves AKA's budget at the biennial convention, also called the Boule, and Plaintiffs assert that expenditures not provided for in the budget submitted to the Boule cannot be authorized except on an emergency basis. (Pls.' 2d Am. Compl., ¶¶ 39, 87-88). According to the Second Amended Complaint, AKA's primary sources of funds for its operations are the registration fees of its

financially active members and registration fees required for participation in the biennial Boule meeting. *Id.* at ¶ 59-60.

This lawsuit centers mainly on Plaintiffs' contentions that the Directorate engaged in gross financial mismanagement and misappropriation of AKA's funds. *Daley*, 26 A.3d at 726. In particular, Plaintiffs allege that, without authorization from the Boule, the Directorate made several large payments to Defendant Barbara McKinzie, AKA's former President, during her tenure in that position; in fact, Plaintiffs allege, the Directorate refused to present these actions to the Boule, thereby preventing AKA's membership from even discussing the payments. *Id.* at 727. According to Plaintiffs, these "unprecedented and unapproved" payments marked a significant departure from AKA's prior practice of not compensating the national President. (Pls.' 2d Am. Compl., ¶¶ 95-116). Plaintiffs allege numerous other instances of financial mismanagement and misuse; for example, a $20,000 "kickback" that McKinzie arranged with one of AKA's vendors, *id.* at ¶¶ 66-67; missing checks from AKA's check register totaling $327,000, *id.* at ¶ 70(a); $900,000 allocated and spent for a "Boule living legacy museum and finale" event that never took place, *id.* at ¶ 127; and significant losses from a risky failed investment strategy, *id.* at 139-41.

As this Court's February 29, 2012 Order explained, the Second Amended Complaint "articulates nine types of claims and lists twelve counts":

> (1) breach of fiduciary duty against Defendant McKinzie, (2) breach of fiduciary duty against Defendants Glover and James, (3)breach of fiduciary duty against remaining directorate Defendants, (4) breach of contract against McKinzie, (5) breach of contract against all Defendants, (6) fraud against Barbara McKinzie, (7) unjust enrichment against McKinzie, (8) ultra vires against all Defendants, (9) defamation against all Defendants, (10) false light against all Defendants, (11) intentional infliction of emotional distress against all Defendants, and (12) a claim for accounting against all Defendants.

(February 29, 2012 Order, 3). In the February 29, 2012 Order, this Court dismissed only the defamation, false light, and intentional infliction of emotional distress claims.

As remedies for their various causes of action, Plaintiffs make thirteen separate prayers for relief. (Pls.' 2d Am. Compl., 46-47). The instant Motion asks that the Court grant summary judgment to Defendants with respect to two of those forms of relief and accordingly deny Plaintiffs the opportunity to seek at trial (i) reinstatement of their membership privileges, and (ii) a permanent injunction keeping Defendants from adversely affecting Plaintiffs' membership privileges and rights.

II. Legal Standard

To prevail on a motion for summary judgment, the moving party must establish, based upon the pleadings, discovery, and any affidavits or other materials submitted, that there is no genuine issue as to any material fact and that it is therefore entitled to judgment as a matter of law. *Grant v. May Dep't Stores Co.*, 786 A.2d 580, 583 (D.C. 2001); Super. Ct. Civ. R. 56 (c). A trial court considering a motion for summary judgment must view the evidence in the light most favorable to the non-moving party and may grant the motion only if a reasonable jury could not find for the non-moving party based upon the evidence in the record. *Grant*, 786 A.2d at 583 (citing *Nader v. De Toledano*, 408 A.2d 31, 42 (D.C. 1979)); *Bailey v. District of Columbia*, 668 A.2d 817, 819 (D.C. 1995).

The moving party has the initial burden of proving that there is no genuine issue of material fact in dispute. If the moving party carries this burden, then the non-moving party assumes the burden of establishing that there is an issue of material fact genuinely in dispute. *Grant*, 786 A.2d at 593 (citing *O'Donnell v. Associated Gen. Contractors of Am., Inc.*, 645 A.2d

1084, 1086 (D.C. 1994)). Conclusory allegations or denials do not suffice to establish that a genuine issue of material fact is in dispute. *Boulton v. Inst. of Int'l Educ.*, 808 A.2d 499, 502 (D.C. 2002); Super. Ct. Civ. R. 56 (e). There must be "some significant probative evidence tending to support the complaint so that a reasonable fact-finder could return a verdict for the non-moving party." *Lowery v. Glassman*, 908 A.2d 30, 36 (D.C. 2006) (internal quotation and citation omitted).

III. Analysis

Defendants' Motion contends that Plaintiffs cannot obtain equitable relief from the Court regarding their membership privileges in AKA because District law does not permit the Court to intercede in the internal governance of a corporation when valid bylaws are in effect. Defendants argue that where "a member of a nonprofit corporation contests her suspension, and when the nonprofit corporation has a procedure in place for resolving challenges to the member's suspension, the District of Columbia Code commands the Court to do nothing more than enforce the corporation's appeals procedure." (Defs.' Mot., 1; *see also* D.C. Code § 29-401.22(c) (prohibiting the Court from making a determination of the validity of nonprofit's corporate action where the nonprofit corporation has provided a means of resolving a challenge in its articles of incorporation or bylaws)). Plaintiffs argue that § 29-401.22(c) does not yet apply to AKA, however, because AKA is an "Old Act" corporation and because, at this point, the D.C. Nonprofit Corporation Act, D.C. Code § 29-401 et seq. (hereinafter "DCNCA"), only applies to "Old Act" corporations that have affirmatively requested to subject themselves to the DCNCA's provisions. (Pls.' Opp'n, 10). Plaintiffs also claim that § 29-401.22(c), if it were to apply to

AKA, does not support Defendants' position, because Plaintiffs seek to enforce AKA's bylaws through this lawsuit. *Id.* at 12-13.[3]

D.C. Code § 29-107.01(b) provides for a two-year transition period for "Old Act" corporations (i.e. nonprofit corporations incorporated prior to the August 6, 1962, the effective date of the DCNCA's predecessor statute). Old Act corporations are not automatically subject to the DCNCA until two years after its January 1, 2012 effective date. Per § 29-107.01(b), however, an Old Act corporation can make itself subject to the DCNCA earlier by filing notice with the Mayor. AKA has not yet filed the notice specified in § 29-107.01(b); therefore, the DCNCA does not yet apply to AKA.[4] Defendants' Motion is based entirely upon § 29-401.22(c), and because that provision is not applicable to AKA, the Motion must be denied.[5]

Moreover, even if the DCNCA did apply to AKA, the Court could not grant Defendants' Motion. Plaintiffs' requests for reinstatement and other injunctive relief essentially seek only to enforce AKA's bylaws, which places these requests for relief squarely within the Court's

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[3] Plaintiffs argue as well that the "law of the case" doctrine permits the Court, notwithstanding the terms of § 29-401.22(c), to exercise jurisdiction over their wrongful suspension claims because the Court of Appeals has already determined that the Court can reach the ultra vires and breach of contract claims. (Pls.' Opp'n, 7-9). Our Court of Appeals has explained, however, that the "law of the case" doctrine applies only when "the motion under consideration is substantially similar to the one already raised before, and considered by, the first court." *Kumar v. District of Columbia Water & Sewer Auth.*, 25 A.3d 9, 13 (D.C. 2011) (quoting *Tompkins v. Washington Hosp. Ctr.*, 433 A.2d 1093, 1098 (D.C. 1981)). Plaintiffs did not make claims regarding their alleged wrongful suspensions until after the Court of Appeals issued its decision in this case, nor were issues regarding the applicability of the DCNCA raised before the Court of Appeals; therefore, this Court does not consider the issues raised by Plaintiffs to be "substantially similar to the one[s] already raised before" under *Kumar*. The "law of the case" doctrine does not support denial of Defendants' Motion.

[4] Defendants contend in their Reply that the DCNCA is currently applicable to AKA because § 29-107.01(b), which requires notice to the Mayor of the nonprofit corporation's intent to subject itself to the DCNCA's provisions, is merely a "technical requirement." (Defs.' Reply, 2). Defendants argue that the only penalty for the failure to file notice is that the nonprofit corporation "shall thereafter be barred from asserting that it is not subject" to the DCNCA. *Id.*; *see also* D.C. Code § 29-107.01(b). Defendants are correct that the DCNCA's application provision, § 29-414.01, states that Chapter 29 of the D.C. Code applies to all existing domestic nonprofit corporations. However, the Court must read that to mean that all provisions of the DCNCA, including the two-year transition period, apply to such nonprofit corporations. To do otherwise – that is, to adopt Defendants' broad interpretation of the application provision – would render the two-year transition provision's specific language essentially meaningless, which the Court may not do. *See D.C. Appleseed Ctr. For Law & Justice, Inc., v. D.C. Dep't of Ins.*, 54 A.2d 1188, 1213 (D.C. 2012); *see also Helvering v. Morgan's, Inc.*, 293 U.S. 121, 126-27 (1934).

[5] Because the Court finds that the DCNCA does not yet apply to AKA, there is no need to address Plaintiffs' argument that the DCNCA should not apply retroactively to their alleged 2009 suspensions. *See* Pls.' Opp'n, 12-13.

jurisdiction even under the express terms of § 29-401.22(c). This statutory provision prohibits the Court from hearing and determining the validity of a nonprofit corporate action affecting the rights of a member if the "nonprofit corporation has provided in its articles of incorporation or bylaws for a means of resolving a challenge to [the] corporate action, *but the Superior Court may enforce the articles or bylaws if appropriate*." (emphasis added.)

Here, Plaintiffs specifically allege that Defendants violated AKA's bylaws. The Second Amended Complaint contends that Defendants suspended Plaintiffs to retaliate against them for filing this lawsuit, and that such retaliation "is not provided for in the AKA Constitution and Bylaws." (Pls.' 2d Am. Compl., ¶ 165). Plaintiffs further allege that Defendant McKinzie "refused to schedule appeal hearings" on the suspensions, "thereby denying such members their right to an appeals process which is set forth in Article VI, Sec. 15 of the Bylaws." *Id.* at ¶ 169. Indeed, as the Court of Appeals noted in its decision in this case, the entire lawsuit consists of allegations of "various violations of the constitution and bylaws" of AKA. *Daley*, 26 A.3d at 731. As noted *supra*, Defendants' Motion relies solely upon § 29-401.22(c); even if that provision were to apply to AKA, given the allegations underlying this case, the express terms of that statute would not support the grant of summary judgment to Defendants.

Accordingly, it is this 5th day of February, 2013 hereby

ORDERED that Defendants' Motion for Partial Summary Judgment to Dismiss Plaintifff's [sic] Demand for Reinstatement and Injunctive Relief" is DENIED.

Todd E. Edelman
Associate Judge
(Signed in Chambers)

Copy by e-serve to:

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