

STATE OF NEW YORK
SUPREME COURT COUNTY OF RENSSELAER

GEORGE W. CRISS, III, DAVID A. GLOWNY,
JOHN A. KROB, THEODORE F. MIRCZAK, JR.,
JAMES NAPOLITANO, JOSEPH TEMPLIN,
PETER VANDERMINDEN, and
PETER VANDERZEE,

DECISION/ORDER

Plaintiffs,

-against-

THE RENSSELAER ALUMNI ASSOCIATION,

Defendant.

All Purpose Term
Hon. Andrew G. Ceresia, Supreme Court Justice
Index No. 2019-263996

Appearances:

Cornelius D. Murray, Esq.
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Ceresia, J.

By order to show cause dated August 26, 2019, plaintiffs moved for a preliminary injunction enjoining defendant from conducting its forthcoming election of officers and trustees.

Defendant opposed. The Court conducted a conference in order to allow the attorneys to be heard further in connection with their respective positions. At the conference, the attorneys agreed that an evidentiary hearing was not necessary for a determination of this motion.

A preliminary injunction may be granted under CPLR article 63 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 the equities tipping in the moving party's favor (see Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 NY3d 839, 840 [2005]; Confidential Brokerage Services, Inc. v Confidential Planning Corporation, 85 AD3d 1268, 1269 [2011]; Emerald Green Property Owners Association, Inc. v Jada Developers, LLC, 63 AD3d 1396, 1397 [2009]; Sync Realty Group, Inc. v Rotterdam Ventures, Inc., 63 AD3d 1429, 1430-1431 [2009]; Green Harbour Homeowners' Ass'n, Inc. v Ermiger, 67 AD3d 1116, 1117 [2009]). It is a drastic remedy which should be used sparingly (see Welcher v Sobol, 222 AD2d 1001, 1002 [1995]; Clark v Cuomo, 103 AD2d 244, 246 [1984]). The party seeking the preliminary injunction has the burden of proof of demonstrating, by clear and convincing evidence, his or her entitlement to such relief (see Aetna Ins. Co. v Capasso, 75 NY2d 860, 862 [1990]; Biles v Whisher, 160 AD3d 1159, 1160 [2018]; Blinds and Carpet Gallery, Inc. v E.E.M. Realty, Inc., 82 AD3d 691, 692 [2011]; Sync Realty Group, Inc. v Rotterdam Ventures, Inc., 63 AD3d at 1430).

Turning first to the issue of the likelihood of success on the merits, plaintiffs assert that -- as individual members of defendant, a non-profit corporation that represents the approximately 100,000 alumni of Rensselaer Polytechnic Institute -- their right to elect board officers and trustees has essentially been usurped by the board itself. That is, the board's nominating

committee chooses, from among proposed candidates for the board, a slate composed of a single candidate for each vacancy. The slate is then submitted to the board for approval and ultimately to the members for a vote. Plaintiffs contend that this process deprives them of the right to choose candidates. However, the manner in which elections are to be conducted is governed by an association's by-laws (see N-PCL § 703 [b]) and, here, defendant's by-laws allow for elections to be conducted in the above-described manner (see Krob Aff., Ex. B, Art. VI, § 2). The nominating committee does not elect or remove officers or fill vacancies, which would be unlawful (see N-PCL § 712 [a] [2], [6]). Rather, it is the members who ultimately cast the determining votes. Plaintiffs also contend that the upcoming election will not have a proper quorum because the number of members required to constitute a quorum was illegally lowered by the board. However, the board lowered the quorum requirement by amending its by-laws, and the board is vested with the authority to do so, both by law and by defendant's own charter and by-laws (see N-PCL § 602 [b]; Krob Aff., Ex. A, ¶ 3; Ex. B, Art. XI). Accordingly, the Court finds that plaintiffs have failed to meet their burden of demonstrating a likelihood of success on the merits.

Next, with respect to the issue of irreparable harm, plaintiffs essentially argue that the forthcoming election will be illegal and thus frustrate their attempts to obtain representation on the board. Plaintiffs also contend that there would be harm to the electoral process and their right to a fair election. However, bearing in mind the above discussion regarding the issue of likelihood of success on the merits, and noting that there is an explicit mechanism in place by which plaintiffs can challenge any election that they deem unlawful (see N-PCL § 618), the Court concludes that plaintiffs have failed to meet their burden of demonstrating that they will

suffer irreparable harm in the event that this election is allowed to proceed. As for plaintiffs' argument that the upcoming election will disturb the status quo, which they seek to preserve, that assertion is speculative. Depending upon the results of the upcoming election, it may very well be that the status quo is maintained. That is, if the proposed slate is defeated, the current board will remain in place.

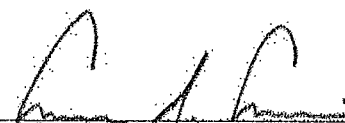
Finally, having considered all of the facts and circumstances of this case, as well as the parties' respective arguments for and against the granting of injunctive relief, the Court finds that plaintiffs have not satisfied their burden of establishing that a balance of the equities tips in their favor.

For all of the foregoing reasons, it is hereby

ORDERED that plaintiffs' motion for a preliminary injunction is denied.

This shall constitute the decision and order of the Court. The original decision/order is returned to the attorney for the defendant. All other papers are being delivered to the Supreme Court Clerk for delivery to the County Clerk or directly to the County Clerk for filing. The signing of this decision/order and delivery of this decision/order does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

Dated: September 24, 2019
Troy, New York



Andrew G. Ceresia
Supreme Court Justice

Papers considered:

1. Order to Show Cause signed by Hon. Michael Melkonian, dated August 26, 2019; Affidavit of John A. Krob, with annexed exhibits; Memorandum of Law;
2. Notice of Cross-Motion dated September 12, 2019; Affidavit of Marc H. Goldberg, Esq., with annexed exhibits; Affidavit of Kareem I. Muhammad, with annexed exhibits; Memorandum of Law;
3. Plaintiffs' Memorandum of Law in Opposition to Defendant's Cross-Motion, dated September 18, 2019.