

STATE OF NEW YORK  
SUPREME COURT COUNTY OF RENSSELAER

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

Plaintiffs,

-against-

THE RENSSELAER ALUMNI ASSOCIATION,

Defendant.

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**DECISION AND ORDER**

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

Appearances:

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Ceresia, J.

Plaintiffs, a group of alumni of Rensselaer Polytechnic Institute (“RPI”), commenced the above-captioned action against defendant, a non-profit corporation that represents the approximately 100,000 alumni of RPI, seeking a declaratory judgment and permanent injunction with respect to issues surrounding the parties’ respective powers to amend defendant’s by-laws and elect trustees to its board. Following plaintiffs’ filing of a verified amended and supplemental complaint (“the complaint”), defendant now moves to dismiss the complaint pursuant to CPLR 3211 (a) (1) and (7). Plaintiffs oppose the motion and also request that the Court convert defendant’s motion to one for summary judgment. Defendant opposes that request.

The facts of this case are not in dispute. Plaintiffs are a group of alumni who wish to effect change at RPI, in part, by communicating their concerns to the rest of RPI’s alumni. In May 2018, plaintiffs submitted a petition to defendant’s board of trustees (“the board”) calling for a special meeting of its members. A dispute arose surrounding the scheduling of that special meeting. Since then, at a number of annual membership meetings and special meetings, plaintiffs have raised objections to the manner in which the board has amended its bylaws and conducted trustee elections, among other matters. Representatives of the parties met in an attempt to resolve their issues, and plaintiffs submitted a set of proposed amendments to the by-laws, but the board declined to adopt them. Plaintiffs thereafter commenced the instant action to challenge the legality of certain sections of the by-laws.

Turning to the instant motion, “[w]hen a party moves to dismiss the complaint in a declaratory judgment action . . . the court should make a declaration, even [if] the plaintiff is not

entitled to the relief that he [or she] seeks. A mere dismissal is not appropriate” (Dodson v Town Bd. of Town of Rotterdam, 119 NYS3d 590, 594 [2020] [internal quotation marks and citations omitted]). “Where no question of fact is raised but only a question of law or statutory interpretation is presented on a motion to dismiss a declaratory judgment action, the court . . . may convert a motion to dismiss to a motion for summary judgment (see CPLR 3211[c]), and the notice of such conversion is excepted where only questions of law are raised, they have been fully briefed by the parties and such treatment is requested by one party” (Spilka v Town of Inlet, 8 AD3d 812, 813 [2004]; see Dodson v Town Bd. of Town of Rotterdam, supra). Here, the parties agree that only questions of law and statutory interpretation have been presented and that both parties have fully briefed these issues.<sup>1</sup> Accordingly, the Court hereby exercises its discretion to treat the motion as one for summary judgment (see id.).

The essence of plaintiffs’ single cause of action, containing five separate specific claims, is that portions of defendant’s by-laws are in violation of the Not-for-Profit Corporation Law and/or defendant’s charter.<sup>2</sup> Thus, the Court must examine each of the challenged portions of the by-laws and determine whether they comport with the law and the charter. “When presented with a question of statutory interpretation, [the Court’s] primary consideration is to ascertain and give effect to the intention of the Legislature. The statutory text is the clearest indicator of legislative intent and courts should construe unambiguous language to give effect to its plain

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While defendant indicates that it opposes the request to convert its motion to one for summary judgment, it appears that defendant is, in actuality, simply opposing the granting of summary judgment in plaintiffs’ favor. Not only does defendant concede that this case presents only questions of law, but defendant claims that it is entitled to judgment as a matter of law (see Reply Memorandum of Law, at 11).

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While the complaint also makes reference to purported violations of the Education Law, neither the complaint nor plaintiffs’ brief cite to any particular portions of the Education Law that have allegedly been violated.

meaning” (Matter of DaimlerChrysler Corp. v Spitzer, 7 NY3d 653, 660 [2006] [internal quotation marks and citations omitted]).

Plaintiffs’ first claim is that the board’s amendment of Article III, § 2 of the by-laws, which raised the minimum number of members required to call a special meeting from 100 members to 10% of the membership, violated the law and defendant’s charter. Not-for-Profit Corporation Law § 603 (c) provides, in relevant part, that “[s]pecial meetings of the members may be called by the board and by such person or persons as may be authorized by the certificate of incorporation or the by-laws. In any case, such meetings may be convened by the members entitled to cast ten per cent of the total number of votes entitled to be cast at such meeting.” As such, the amendment of the by-laws to provide that a request for a special meeting must be made by at least 10% of the members is consistent with this statute and does not violate it. Additionally, defendant’s charter contains no mention of special meetings or the minimum number of members required to call them. Thus, this section of the by-laws does not violate the law or defendant’s charter.

Second, plaintiffs claim that the board improperly changed the quorum requirement in Article III, § 4 of the by-laws without first either calling a special meeting pursuant to N-PCL § 608 (c) or obtaining court approval under N-PCL § 608 (e). A quorum of the members of a nonprofit corporation is generally considered to be a majority of the members, but the by-laws of such corporation may provide for a smaller quorum (see N-PCL § 608 [a], [b]). However, the by-laws may not provide for a quorum that is smaller than the lesser of 100 members or 10% of the membership (see N-PCL § 608 [b]). When a corporation’s by-laws provide a quorum that is too small under the law, the corporation may call a special meeting for the purpose of changing

the by-laws to increase the quorum (see N-PCL § 608 [c]). Critically, however, a plain reading of the statute, coupled with review of the underlying legislative materials, reveals that the corporation is not *required* to call such a special meeting – this is simply an available option for corporations that have an illegally small quorum and no other way of amending their by-laws to increase it (see Sealey v American Soc. of Hypertension, Inc., 10 Misc 3d 572, 576 [2005], aff'd 26 AD3d 254 [2006], citing Explanatory Memorandum of Joint Legislative Committee to Study Revision of Corporation Laws). Similarly, a corporation may, but is not required to, petition Supreme Court for an order enabling it to dispense with the quorum requirement and continue to conduct business if it cannot obtain the necessary quorum under its by-laws (see N-PCL § 608 [e]; NY Spons. Memo., 2005 S.B. S5238). Both the permissive language in the statute as well as the memorandum that accompanied the legislation demonstrate that this is another option provided by the legislature for changing the quorum requirement. However, a corporation is not limited to choosing either of the above two options as the means of making such a change.

In this case, defendant's by-laws formerly provided for a quorum of only 20 members, which was too small under the law. As indicated above, defendant was not required to hold a special meeting to change the quorum provision, nor was it required to obtain court approval to do so, because defendant's charter and by-laws provided a method by which the board could make amendments to the by-laws (see Goldberg Aff., Ex. B, Absolute Charter, ¶ 3; Ex. C, Rensselaer Alumni Association By-laws, Art. XI). Thus, the board acted properly in voting, in accordance with the by-laws, to increase the quorum requirement to 100 members. The board's action was consistent with defendant's charter and by-laws and did not violate the Not-for-Profit Corporation Law.

Plaintiffs' third claim is that Article III, § 1 and Article VI, § 2 of the by-laws improperly limit members to voting for or against a pre-selected slate of candidates for the board of trustees, thereby divesting the members of their right under the charter to elect trustees. However, the charter states only that the trustees are to be elected by the membership (see Goldberg Aff., Ex. B, Absolute Charter, ¶ 3). It says nothing about the manner in which trustees are to be elected. Further, the Not-for-Profit Corporation Law provides that trustees are to be elected "in the manner . . . provided in the [charter] or the by-laws" (N-PCL § 703 [b]). Thus, the provisions contained in the by-laws for voting on a slate of candidates do not violate the charter or the law.

As for plaintiffs' fourth claim, they assert that Article V, § 1 (c) of the by-laws improperly vests the executive committee of the board of trustees with the sole power to elect officers and fill officer vacancies. It must initially be noted that this section does not vest the executive committee with the power to elect officers, as plaintiffs claim. That would, indeed, be contrary to the law (see N-PCL § 712 [a] [6]). Rather, this section deals only with the filling of vacancies of officer positions. That being the case, plaintiffs contend that this provision violates N-PCL § 712 (a) (2). That statute provides, in relevant part, that the board of trustees may create committees, and any committee shall have the full powers of the board, except that no committee shall have the power to fill vacancies in the board of trustees itself or in any committee (see N-PCL § 712 [a] [2]). Nothing in the plain wording of this statute prevents the executive committee from filling *officer* vacancies. Accordingly, this section of the by-laws does not violate the statute in question.

With respect to plaintiffs' fifth and final claim, plaintiffs argue that Article XI, § 1 of the by-laws violates N-PCL § 602 by purporting to give sole power to the board to adopt, amend, or

repeal the by-laws, thereby excluding the members from having that authority. Pursuant to the statute, a nonprofit corporation's "by-laws may be adopted, amended or repealed by the members . . . and, unless otherwise provided in the certificate of incorporation or the by-laws adopted by the members, by the board" (N-PCL § 602 [b]). Thus, as the parties agree, the statute permits both the members and the board to adopt, amend, or repeal the by-laws. The language of Article XI, § 1 is not inconsistent with this statute, as it states that the by-laws "may" be amended by a vote of two-thirds of the board. This section does not, on its face, grant sole power to the board to amend the by-laws, nor does it in any way expressly prevent the members from doing so. Further, this section is consistent with defendant's charter, which provides only that "[t]he board shall have power to adopt by-laws" (Goldberg Aff., Ex. B, Absolute Charter, ¶ 3). Again, like the by-laws, the charter does not grant exclusive power to the board to adopt by-laws, nor does it on its face prevent the members from doing so. Based upon the foregoing, this section of the by-laws does not violate the statute in question.

Accordingly, it is hereby

**ORDERED**, that defendant's motion to dismiss the complaint is converted to a motion for summary judgment, and it is further

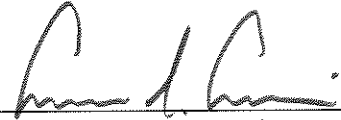
**ORDERED**, that defendant's motion for summary judgment is granted, and it is further

**ORDERED**, that it is hereby declared that the sections of the by-laws challenged by plaintiffs are not in violation of the Not-for-Profit Corporation Law or defendant's charter.

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: May 14, 2020  
Troy, New York



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Andrew G. Ceresia  
Supreme Court Justice

Papers considered:

1. Notice of Motion, dated December 20, 2019; Affidavit of Marc H. Goldberg, Esq., with annexed exhibits; Memorandum of Law;
2. Affirmation in Opposition of Cornelius D. Murray, Esq., dated February 7, 2020, with annexed exhibits; Affidavit of David A. Glowny, with annexed exhibits; Affidavit of John A. Krob; Memorandum of Law;
3. Reply Memorandum of Law, dated February 26, 2020.