

THE STATE OF NEW HAMPSHIRE

BELKNAP, SS.

SUPERIOR COURT

Donald Leclair

v.

New Hampshire Snowmobile Association

Docket No.: 211-2018-CV-00247

ORDER

Hearing held (3/13/19) on defendant's Motion for Summary Judgment (filed 12/21/18), plaintiff's Objection to same (filed 2/4/19), and defendant's Reply to same (filed 2/8/19). Subsequent to review, the Court renders the following determination(s).

By way of brief background, plaintiff, Donald Leclair, filed a complaint against defendant, New Hampshire Snowmobile Association ("NHSA"), challenging the adoption of certain amendments to its Bylaws. Plaintiff argues that the Bylaw amendments are void because NHSA failed to comply with its governing documents, including by failing to give proper notice of the proposed changes to every individual member. Plaintiff's remaining claims allege breach of contract (Count I) and seek declaratory relief (Count III) and attorney's fees (Count IV).¹ NHSA now moves for summary judgment, arguing that plaintiff's claims are not justiciable and he lacks standing to sue. Plaintiff objects.

Factual Background

NHSA is a nonprofit organization that, among other things, "promote[s] and foster[s] snowmobiling as a sport and recreation for its members." (Def.'s Mot. Summ. J., Ex. A, Art. II(A). Its members include 106 local snowmobile clubs with approximately 24,000 individual

¹ Count II of plaintiff's complaint, which alleged violations of the Consumer Protection Act, was dismissed by the Court on December 18, 2018. (Court Index # 13.)

members. (Def.'s Mot. Summ. J., Ex A, Art. II(A); Gould Aff. ¶ 2, Dec. 21, 2018.)² Plaintiff is an active member of NHSA and a founding member of the Bridgewater Mountain Snowmobile Club, which is a local club member of NHSA. Plaintiff also serves as a delegate of NHSA on behalf of his club.

NHSA is governed by a Constitution and Bylaws and is managed by a Board of Directors (the "Board") consisting of five Executive Officers and eleven Directors who are "charged with carry[ing] out the wishes of the majority of [NHSA's] membership." (Def.'s Mot. Summ. J., Ex. A, Art IV.) The governing documents set out particular requirements for amending the By-laws, including that proposed amendments must be "submitted to the members in writing at least sixty (60) days prior to the Annual Meeting or at least thirty (30) days before any special meeting of the general membership at which a vote is to be taken." (Id. Art. VII(B).) In addition to the Board members, voting on proposed amendments at an annual or special meeting is performed by delegates, who are elected by the members of each local club to represent that club's membership at the meeting. (Id. Art. V(I).) The number of delegates afforded to a specific local club is based on the number of individual members of that club. (Id. Art. V(I)(3).) A minimum of 50 delegates is needed to constitute a quorum, and a two-thirds majority vote by the attending delegates is required to adopt a proposed amendment. (Id. Art. V(A), VII(C).)

In 2016, the Consumer Protection Division of the New Hampshire Attorney General's Office commenced an antitrust investigation into NHSA, including their practice of soliciting online sales for local club and individual NHSA memberships. (Gould Aff. ¶ 7.) As part of a settlement agreement with the Attorney General's Office, NHSA signed an "Assurance of Discontinuance" in January 2018. (Id. ¶ 8; Pl.'s Obj., Ex. 1.) This obliged NHSA to, among

² Dan Gould is the Executive Director of NHSA and submitted his affidavit in support of defendant's motion for summary judgment.

other things, “charge the member clubs dues based on the number of individual NHSA members who are members of that club, instead of charging the individual members directly as had been prior practice.” (Gould Aff. ¶ 8.) In order to comply with the agreement, NHSA sought to amend the By-laws to alter the dues structure to bill member clubs rather than individuals, and so proposed amendments were drafted and approved by the Board on March 20, 2018. (Id. ¶¶ 9–10.) The Board scheduled a special meeting for April 28, 2018, to vote on the proposed amendments, which was announced on March 22, 2018, through NHSA’s website and Facebook page along with the approved language of the amendments. (Id. ¶¶ 10–11.) On March 29, 2018, NHSA also sent an email to each of the 106 member club Presidents with a notice advising them of the Bylaw proposal to be voted on at the April 28 special meeting with a link to NHSA’s website to view the proposed drafts. (Gould Aff. ¶ 11; Pl.’s Obj., Ex. 6.)

According to NHSA, it has historically relied on its member clubs to promulgate notice of proposed amendments to its individual members. (Gould Aff. ¶ 5.) This is because NHSA does not possess or maintain contact information for each of its approximately 24,000 individual members, so it is “impossible” to send individual notice to these members. (Id. ¶ 6.) In addition to relying on its member clubs, NHSA has also notified members of proposed amendments by posting on its website or social media site, and by publishing them in their newsletter, *Sno-Traveler*, which some individual members subscribe to receive.³ (Id. ¶¶ 5–6.) However, the proposed amendments in this case were not published in *Sno-Traveler* because they were not adopted by the Board in time to be included in the March edition, which went to press on March 16, 2018, and the next issue was not to be published until September 2018. (Id. ¶ 12.)

³ While the By-laws state that each member shall be sent each issue of the *Sno-Traveler* newsletter, individuals who become members of NHSA through a local member club are given the choice of whether to receive it. (Def.’s Reply, Ex. A.)

At the April 28, 2018 special meeting, the proposed amendments were adopted with the requisite delegate support to amend NHSA's Bylaws. (Id. ¶ 13.) According to plaintiff, approximately 90 delegates were present at the meeting, including himself, out of 390 eligible delegates.⁴ (Leclair Aff. ¶ 12.) One of the amendments changed a Bylaw provision that set forth the number of delegates afforded to each member club, which was based on the number of individual members belonging to the club. The amendment reduced the overall number of eligible delegates by altering the individual membership ranges used to determine how many delegates are permitted to each club. Another amendment changed a Bylaw provision regarding how future amendments are submitted to and considered by the Board before being submitted to the NHSA membership for a final vote. A third amendment changed a Bylaw provision relating to dues, adding that member clubs will be assessed dues based on their membership transactions.

Analysis

NHSA moves for summary judgment for two primary reasons. First, NHSA argues that plaintiff lacks standing to sue because none of his rights were infringed and he received actual notice of the special meeting, so he therefore suffered no legal injury from NHSA's alleged failure to properly notify all members of the meeting. Second, NHSA argues that plaintiff's claims are not justiciable under the Bricker doctrine, which stands for the proposition that courts should not liberally interfere with the internal decisions of voluntary associations. Bricker v. N.H. Med. Soc'y, 110 N.H. 469 (1970). The Court shall address each argument in turn.

"A party's standing is a question of subject matter jurisdiction, which may be addressed at any time." In re Stonyfield Farm, Inc., 159 N.H. 227, 231 (2009). "In evaluating whether a party has standing to sue, we focus on whether the party suffered a legal injury against which the

⁴ NHSA disputes this figure, clarifying that there were 418 eligible delegates at the time of the special meeting. (Def.'s Reply, n.3.)

law was designed to protect.” Libertarian Party of N.H. v. Sec’y of State, 158 N.H. 194, 195 (2008). The party must show that his “own rights have been or will be directly affected.” Eby v. State, 166 N.H. 321, 334 (2014). Here, NHSA contends that, because plaintiff undisputedly received actual notice of the special meeting and does not personally claim to have been misled by NHSA’s purported misrepresentations, he has not directly suffered a legal injury to satisfy the standing requirements. Plaintiff contends that, as a member of NHSA, he has the right to full and fair participation in its proceedings, and that NHSA’s failure to properly notify members and misleading statements about the purpose of the amendments harmed him by virtue of the overall decreased participation in the voting process. Because the Court finds the justiciability issue to be dispositive, it shall assume, without deciding, that plaintiff has standing to sue and will analyze the justiciability of plaintiff’s claims under Bricker.

“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.” Bricker, 110 N.H. at 470. This principle, referred to as the “Bricker doctrine,” applies to unincorporated associations, which are

generally created and formed by the voluntary action of a number of individuals in associating themselves together under a common name for the accomplishment of some lawful purpose. It is the nature of an organization, rather than its name, which makes it an unincorporated association in the eyes of the law. Among other things, unincorporated associations typically adopt, interpret and administer their own rules, regulations and bylaws, thereby promulgating internal policy and disciplinary procedures for their members.

Exeter Hosp. Med. Staff v. Bd. of Trs. of Exeter Health Res., Inc., 148 N.H. 492, 495–96 (2002) (citations and brackets omitted); See 7 C.J.S. Associations § 1 (defining “association” as “a body of persons acting together . . . upon the methods and forms used by corporations, for the prosecution of some common enterprise”).

As a voluntary association, NHSA has “great discretion when conducting [its] internal affairs, especially when [its] conduct relates to the interpretation and enforcement of [its] rules and regulations.” 6 Am. Jur. 2d Associations and Clubs § 6 at 405. While true that “the constitution and bylaws of a not-for-profit organization [] constitute a contract between the organization and its members,” through this contractual relationship the members “agree that the authorized officer has the power to interpret and the members may be bound by those interpretations; accordingly, the court gives deference to the authorized officer’s interpretations.” Ortiz-Bonilla v. Federación de Ajedrez de Puerto Rico, Inc., 734 F.3d 28, 40 (1st Cir. 2013); See Brzica v. Trs. of Dartmouth College, 147 N.H. 443, 456 (2002) (quoting Yeaton v. Grange, 77 N.H. 332, 334 (1914)) (“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 association].”).

Here, plaintiff’s claims for breach of contract and declaratory judgment⁵ are grounded in his contention that NHSA breached the Bylaws by failing to properly notify all members of the April 28 special meeting, by enacting a change to the dues structure at a special meeting, rather than an annual meeting, and by misleading members as to the purpose of the proposed amendments. In light of the Bricker doctrine outlined above, in order for these claims to be justiciable, plaintiff must make a sufficient showing that the Board’s decisions involved an injustice or illegal action that resulted in damage to him as a member. See Bricker, 110 N.H. at 470.

With respect to notice, plaintiff alleges that NHSA did not submit the proposed changes in writing to the members as required by the Bylaws. (Compl. ¶ 19.) However, the Bylaws do not proscribe a specific method by which the Board is required to submit proposed changes to

⁵ Plaintiff’s claim for declaratory judgment is, in substance, a request for injunctive relief. (See Compl., Count III.)

the members. In the absence of such an explicit provision, the Board must exercise its discretionary authority to make a determination of how to promulgate notice of proposed amendments to the membership. It is undisputed here that NHSA does not maintain contact information for each of its approximately 24,000 individual members. It is further undisputed that NHSA traditionally notifies its membership of meetings and proposed amendments by posting on its website and/or social media site, by submitting notice to the presidents of NHSA's member clubs for promulgation among the club's individual membership, and by publishing in the *Sno-Traveler* newsletter.⁶ The Court finds these are reasonable methods of promulgating notice, particularly in light of NHSA's large membership.

Here, NHSA followed each of these reasonable methods of notifying its membership, except for publishing in the *Sno-Traveler*. Contrary to plaintiff's assertion, publication in the *Sno-Traveler* is not a universal method of notifying all NHSA members, as it is undisputed that members may elect whether to receive it. (Def.'s Reply, Ex. A.) Despite this, NHSA's actions were not "inconsistent with traditional interpretation of [its] bylaws," as it notified its membership consistent with its practice in the past. Hawksley v. N.H. Interscholastic Athletic Ass'n, 111 N.H. 386, 387 (1971). Moreover, as noted above, the methods of notice used in this case were not unreasonable, "nor does the record furnish reason to suppose that [NHSA] did not act 'in good conscience'" in promulgating notice for the special meeting, as it relied on club presidents to notify members by virtue of the delegate selection process. Id. In these circumstances, the Court may not substitute its judgment for that of NHSA's Board, particularly where there is no evidence that any member did not receive notice of the special meeting. See

⁶ While plaintiff points out that the notice sent to the club presidents in this case did not include explicit instructions to disseminate notice to individual members, the Court finds this point immaterial. Given the Bylaws procedure through which delegates must be selected by the individual members of a local club prior to any meeting, it is implicit that the local club will notify its members of a meeting and disseminate any proposed amendments in order to complete this process.

id. This type of internal, discretionary decision-making by the Board is not inconsistent with the Bylaws nor does it involve an injustice or illegal action, so it is therefore the kind not subject to judicial review under Bricker.

Plaintiff further alleges that NHSA violated the Bylaws because they do not permit amendments to the dues schedule at a special meeting. (Compl. ¶ 25.) The relevant Bylaw provision in question states: “The Board of Directors may propose a revision of the dues schedule to be acted on by the membership at any annual meeting. Notice of such revision shall be given at least thirty (30) days prior to the annual meeting.” (Def.’s Mot. Summ. J., Ex. A, Art. VI(D).) However, the Bylaws specifically allow amendments to be proposed at a special meeting with 30-days prior notice, without any limitation as to what provision of the Bylaws can be amended. (Id. Art. VII(A)–(B).) Given the permissive language included in Article VI, the Bylaws do not clearly prohibit changes to the dues schedule from occurring at a special meeting.

Moreover, while plaintiff broadly asserts that NHSA violated the Bylaws by proposing amendments to the dues schedule at a special meeting, he does not specify which amendment made such a revision. There is nothing in the Bylaws specifically referred to as a “dues schedule,” and it is undisputed that the amount of dues—\$10.00—remained the same before and after the special meeting. The only references to “dues” in the Bylaws are the provisions specifying that “[a]ll dues for membership will be payable on or before July 1 annually” and “[o]nly delegates with dues paid will be entitled to vote at any meeting,” (id. Art. VI(A)–(B)), and neither of these provisions was changed at the special meeting. Rather, Article VI(A) was amended to add that “member clubs shall be assessed dues based on their membership transactions.” (Def.’s Answer ¶ 21.) It is not clear how this amendment constitutes a revision to the “dues schedule.” Plaintiff has therefore failed to make a showing that the Board acted

illegally by proposing this amendment at a special, rather than annual, meeting. Further, as the amount of dues remains the same, there is no apparent resulting harm to plaintiff, which is necessary to justify judicial review under Bricker.

Finally, with respect to the purpose of the amendments, plaintiff alleges that NHSA misled its members by claiming that the proposed amendments were developed in response to the Assurance of Discontinuance entered with the Attorney General's Office, in an attempt to improperly induce members to support the proposed changes.⁷ (Compl. ¶ 13, 37–42.) There is, however, no provision under the Bylaws that requires there to be a specific purpose underlying a proposed amendment that members must be informed of prior to voting. Rather, the Bylaws only require the Board to submit any proposed amendments to the membership at least 30 days prior to a special meeting, at which a two-thirds majority of delegates present at the meeting is required to adopt the amendment. In order to constitute a quorum, a minimum of 50 delegates must be present at the meeting. Here, it is undisputed that these provisions were met. Plaintiff therefore cannot make a showing that the Board acted illegally or in contravention to the Bylaws during the amendment process in this case.

Moreover, even if it could constitute an “injustice” for an association to mislead its members as to the purpose of a proposed amendment, plaintiff has provided no evidence to indicate that this occurred in this case. He does not claim to have been personally misled—nor could he, as he voted against the proposed amendments—and he does not specify that any other member was misled into supporting the proposed amendments due to NHSA's representation that they were developed in compliance with the Assurance of Discontinuance. The suggestion that this occurred is therefore speculative, which is insufficient to establish resulting damage


⁷ The Court notes that these allegations were primarily made pursuant to Count II of plaintiff's Complaint, which has since been dismissed. Nevertheless, as both parties address these allegations in their respective motions, the Court shall address the justiciability of this claim under Count I and Count III of plaintiff's Complaint.

under Bricker. Cf. In re Right to Life, 166 N.H. 308, 314 (2014) (“To show an injury in fact, the alleged harm cannot be speculative.”).

In sum, plaintiff has not shown sufficient legal basis for the Court to interfere with NHSA’s internal governance under these circumstances. See Bricker, 110 N.H. at 470; see also Brzica, 147 N.H. at 456 (“A [member’s] . . . dispute with the internal governance procedures of the . . . association . . . does not meet the threshold necessary to intrude upon the association’s internal affairs.”). The Court therefore agrees with NHSA that plaintiff’s claims are not justiciable pursuant to the Bricker doctrine. Accordingly, defendant’s motion for summary judgment is GRANTED, consistent with the above.

SO ORDERED.

Date 9/20/19


James D. O’Neill, III
Presiding Justice