

DOCKET NO.: X07-CV-23-6177234-S : SUPERIOR COURT
 CHARTER OAK HEALTH CENTER, INC. ET AL. : COMPLEX LITIGATION
 DOCKET
FILED
 v. : AT HARTFORD
 MAY 28 2024
 BARDELONA, ET AL. : MAY 28, 2024

HARTFORD J.D.

MEMORANDUM OF DECISION ON MOTION TO DISMISS (#105)

Before the court is the motion of the defendants¹ to dismiss in which they assert that the plaintiffs² lack standing because they are no longer board members and thus, the plaintiffs do not have the authority to initiate a lawsuit on behalf of the Charter Oak Health Center, Inc. (“Charter Oak”). Because the court finds that the plaintiffs lack standing on the grounds that they are no longer board members pursuant to article four, § 2 of the bylaws, which varies permissibly from General Statutes § 33-1085 (e) pursuant to General Statutes § 33-1001, the motion to dismiss is granted and the case is dismissed.

The following facts and procedural history are relevant to this decision. The operative complaint is the complaint which was filed on February 23, 2024.³ # 122. Charter Oak is a

¹ The defendants are Veronica Barcelona, Claudius McNish and Lolita Young. They will collectively be referred to herein as “the defendants.” Barcelona was elected for her first term on August 23, 2023, McNish was elected for his first term on March 27, 2019, and a third term on October 26, 2022, and Young was elected for her first term on March 27, 2019, and a third term on October 26, 2022. See the parties’ joint stipulation regarding the Board of Directors’ dates of service; # 120; for a more in-depth breakdown of each board members terms.

² The plaintiffs are Charter Oak Health Center, Inc., Adrian Wood, Joel Cruz, Martin John, Eileen Alvarado, and Leslie Arroyo. Wood was elected for his first term on May 22, 2013, and a sixth term on October 25, 2023. Cruz was elected for his first term on May 22, 2013, and a sixth term on October 25, 2023. John was elected for his first term on July 25, 2012, and a seventh term on October 25, 2023. Alvarado was elected for her first term on March 23, 2016, and a fourth term on October 26, 2022. Arroyo was elected for his first term on August 13, 2014, and his fifth term on October 26, 2022. See the parties’ joint stipulation regarding the Board of Directors’ dates of service; # 120; for a more in-depth breakdown of each board members terms. Wood, Cruz, John, Alvarado, and Arroyo will collectively be referred to as “the plaintiffs” and Charter Oak Health Center, Inc. will be referred to as “Charter Oak.”

³ The court notes that the complaint which was in effect at the time of filing of the motion to dismiss was the complaint that was filed on November 27, 2023. # 100.31. Because no substantive changes have been made to the complaint, however, the court treats the February 23, 2024 complaint as the operative complaint.

#126.00

nonprofit community health center, headquartered in Hartford, Connecticut, that operates as a Federally Qualified Health Center in order to provide outpatient primary care and specialty medical services, behavioral health services, and dental services to medically underserved residents in the greater Hartford area. As a Federally Qualified Health Center, Charter Oak is subject to various state and federal regulations, such as certain statutory provisions in Connecticut's Nonstock Corporation Act, General Statutes § 33-1000 et seq., and Chapter 20 of the Health Center Compliance Manual promulgated by the Health Resources and Services Administration (HRSA). The relevant provisions of the Nonstock Corporation Act and of Charter Oak's bylaws will be discussed more fully herein.

The plaintiffs have brought this action seeking a declaratory judgment from the court ordering that the plaintiffs are still members of the Board of Directors after other board members staged an alleged illegal takeover scheme to summarily expel them due to "term limitations." As of November 20, 2023, the nine elected members of Charter Oak's Board of Directors were Adrian Wood (chairperson), Joel Cruz, Jr. (vice chairperson), Eileen Alvarado (secretary), Martin John (treasurer), Leslie Arroyo, Veronica Barcelona, Joy-Lynn Hardy, Claudius McNish, and Lolita Young. Compl. ¶ 26. On November 15, 2023, the board members held a duly noticed board meeting where Rick Markello, the interim chief financial officer, repeatedly expressed that, in his view, some of the board members were beyond the term limits set forth in the Charter Oak bylaws and could no longer serve as board members. Wood stated that the Board of Directors would not address the issue at that meeting. On November 21, 2023, Kimberly Evans, Charter Oak's general counsel, vice president and chief of compliance and legal affairs, notified the Charter Oak board members that the plaintiffs had exceeded the term limits set forth in Charter Oak's bylaws and, as a result, were no longer board members. On November 21, 2023,

after the plaintiffs had been informed by Evans that they were no longer board members, the plaintiffs met and voted to extend a permanent position to Thomas Maynor, the interim chief executive officer (CEO), and to suspend Markello, Evans, and Timothy Powers, the vice president of corporate compliance. The plaintiffs also voted to remove the term limits for board members from the Charter Oak bylaws.

On November 22, 2023, the defendants held a purported special meeting to elect a new chairperson of the Board of Directors. At this meeting, the defendants voted to elect Barcelona as the new chair, to suspend the ongoing CEO search, to engage a professional search firm, and to appoint Markello as interim CEO of Charter Oak. Markello then used his authority: to terminate Charter Oak's contracts with Maynor, to terminate Charter Oak's contract with Nichelle Mullins, the former CEO who had a consulting contract with Charter Oak to resolve outstanding projects, to suspend the e-mail accounts of the plaintiffs, Maynor, and other consultants, and to prohibit the aforementioned from accessing Charter Oak information systems and facilities. The plaintiffs allege that this constitutes an illegal takeover and ask the court, under certain provisions of the Connecticut Nonstock Corporation Act, to determine who the legitimate members of the Board of Directors are and to declare as unlawful, void and/or ultra vires any and all actions taken by the defendants since November 15, 2023, with respect to the operation or governance of Charter Oak.

On December 4, 2023, the defendants filed a motion to dismiss on the grounds that the plaintiffs lack standing to assert claims concerning Charter Oak's governance because they are no longer current board members and as former board members, they have no authority to initiate a lawsuit on behalf of Charter Oak. The court, therefore, in the defendants' view, lacks subject matter jurisdiction over the claims asserted in the complaint. The plaintiffs argue that the

current Board of Directors is composed of the nine individuals that constituted the Board of Directors as of November 15, 2023, and accordingly, because they are still members of the Board of Directors, they have the authority to bring these claims.

“A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.” (Internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013). “A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide.” (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014).

“[A] motion to dismiss pursuant to Practice Book § 10-30 (a) (1) is the appropriate procedure for challenging subject matter jurisdiction.” *Machado v. Taylor*, 326 Conn. 396, 401, 163 A.3d 558 (2017). “Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction” (Internal quotation marks omitted.) *Keller v. Beckenstein*, 305 Conn. 523, 531, 46 A.3d 102 (2012). “[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised.” (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). “[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. . . . It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged.” (Internal quotation marks omitted.) *Financial Consulting, LLC v. Commissioner of Ins.*, 315 Conn. 196, 226, 105 A.3d 210 (2014).

“[B]ecause the issue of standing implicates subject matter jurisdiction, it may be a proper basis for granting a motion to dismiss.” *Electrical Contractors, Inc. v. Dept. of Education*, 303 Conn. 402, 413, 35 A.3d 188 (2012). “If . . . the plaintiff’s standing does not adequately appear from all materials of record, the complaint must be dismissed.” (Footnote omitted; internal quotation marks omitted.) *Burton v. Dominion Nuclear Connecticut, Inc.*, 300 Conn. 542, 550, 23 A.3d 1176 (2011). Moreover, “[i]t is a basic principle of our law . . . that the plaintiffs must have standing in order for a court to have jurisdiction to render a declaratory judgment.” (Internal quotation marks omitted.) *Connecticut Business & Industry Assn., Inc. v. Commission on Hospitals & Health Care*, 218 Conn. 335, 346, 589 A.2d 356 (1991). “A party pursuing declaratory relief must . . . demonstrate, as in ordinary actions, a ‘justiciable right’ in the controversy sought to be resolved, that is, ‘contract, property or personal rights . . . as such will be affected by the [court’s] decision.’ . . . A party without a justiciable right in the matter sought to be adjudicated lacks standing to raise the matter in a declaratory judgment action.” (Citations omitted.) *Id.*, 348, quoting *McGee v. Dunnigan*, 138 Conn. 263, 267, 83 A.2d 491 (1951).

General Statutes § 33-1001 provides in relevant part: “(a) Sections 33-1000 to 33-1290, inclusive, shall be so construed as to provide for a general corporate form for the conduct of lawful activities *with such variations and modifications from the form so provided as the interested parties may agree upon* Whether or not a section of said sections contains the words “unless the certificate of incorporation or bylaws otherwise provide”, or words of similar import, no provision of a certificate of incorporation or bylaw shall be held invalid on the ground that it is inconsistent with such section (b) If the certificate of incorporation, in effect on January 1, 1997, of a corporation without capital stock . . . contains any provision contrary to, inconsistent with or in addition to any provision of sections 33-1000 to 33-1290, inclusive, but

which provision was permitted to be contained in such certificate pursuant to the provisions of applicable law as in effect prior to January 1, 1997, the provisions contained in such certificate shall govern such corporation and the provisions of said sections shall not be held or construed to alter or affect any provision of the certificate of incorporation of such corporation inconsistent herewith” (Emphasis added.)

General Statutes § 33-1085 (e) provides: “Despite the expiration of a director’s term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.” Comparatively, article four, § 2 of Charter Oak’s bylaws states that “[n]ewly-elected Directors shall hold office for a term of two (2) years or until their successors is elected, but *in no event shall a Director hold office for more than three (3) consecutive terms.*” (Emphasis added.) Compl., Exh. A. In the present case, the defendants rely on the bylaws for the proposition that the plaintiffs have exceeded their term limits and can no longer be members of the Board of Directors after they have exceeded three consecutive terms. The plaintiffs, however, argue that § 33-1085 applies because the bylaws are silent as to what occurs after a director’s term expires.

The court notes that “[t]here is little caselaw in Connecticut on the subject of bylaws.” M. Ward Ford, *Connecticut Corporation Law and Practice* (2nd Ed. 2024), § 3.01. Ordinarily, however, “courts should be reluctant to intervene in the affairs of private clubs” and other nonstock corporations. *Sterner v. Saugatuck Harbor Yacht Club, Inc.*, 188 Conn. 531, 537, 450 A.2d 36 (1982). “The primary exception to the general rule [against court intervention] occurs when a member . . . has been . . . expelled in violation of the club’s bylaws.” *Williams v. Black Rock Yacht Club*, 90 Conn. App. 27, 33, 877 A.2d 849 (2005), cert. denied, 276 Conn. 908, 886 A.2d 424 (2005).

The court turns to the interpretation of the relevant phrases present in § 33-1001 in accordance with General Statutes § 1-2z and familiar principles of statutory construction, by examining the text of the statute and its relation to other statutes to determine whether the terms of the bylaws or the terms of § 33-1085 apply. If “the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” General Statutes § 1-2z.

The court finds that § 33-1001 is unambiguous in that it allows a corporation to deviate from the Connecticut Nonstock Corporation Act statutory requirements. Moreover, article five of Charter Oak’s Articles of Incorporation, dated May 15, 1978, states that “the method of election of the Board of Directors and all other activities and business shall be managed as provided in the By-Laws.” See Charter Oak Articles of Incorporation contained in Exh. 1 to Defs.’ Mem. in Supp. of Mot. to Dismiss. Charter Oak’s Articles of Incorporation thus make it clear that the bylaws govern all activities of Charter Oak. Accordingly, the court finds that § 33-1085 is inapplicable in the present case because article four, § 2 of the bylaws varies permissibly from § 33-1085 (e) pursuant to § 33-1001.

The court finds that under the bylaws, the plaintiffs are no longer board members because they have exceeded the bylaws’ term limits. Under article four, § 2 of Charter Oak’s bylaws, after the plaintiffs completed their first three consecutive terms, they were no longer eligible to be members of the Board of Directors.⁴ They therefore lack standing to assert claims concerning Charter Oak’s corporate governance on their own behalf and, as former board members, have no authority to initiate a lawsuit on Charter Oak’s behalf. See e.g. *Staline v. Bradley Memorial*

⁴ Under article four, § 2 of the bylaws, the terms expired “at the end of each Annual Meeting” Accordingly, Wood was no longer in good standing after October 23, 2019, John was no longer in good standing after October 25, 2017, Cruz was no longer in good standing after October 24, 2018, Arroyo was no longer in good standing after October 28, 2020, and Alvarado as no longer in good standing after October 26, 2022.

Hospital, Superior Court, judicial district of New Haven, Docket No. CV-95-0372239-S, 1995 WL 462382, *4 (July 26, 1995, *Martin, J.*) (dismissing the plaintiff's first and second claims because the plaintiff was not a member of the Bradley Memorial Hospital Corporation and, therefore, lacked standing to bring an ultra vires claim). Accordingly, the court lacks subject matter jurisdiction to consider the plaintiffs' claims.

The court finds that this application of the bylaws would not result in absurd or unworkable results as alleged by the plaintiffs. In determining whether a nonstock corporation's bylaws are reasonable, our Supreme Court stated in *Sterner*, that the predecessor of General § 33-1056 (a),⁵ § 33-459 (a), "adopt[ed] common law standards of fair play and [form] the basis for bylaws to be challenged by a member where they are not reasonable." (Internal quotation marks omitted.) *Sterner v. Saugatuck Harbor Yacht Club, Inc.*, supra, 188 Conn. 535. The plaintiffs argue that defining board members that are serving past the term limits provision as not in "good standing" would produce absurd and unworkable results and is inconsistent with the provisions of the bylaws that require a majority of directors in office to constitute a quorum and a vote of a majority of directors present at a meeting to take an action, as well as other HRSA obligations. The court finds that this is not the case. Article four, § 9 (c) allows for special meetings to be called. Thus, compliance with the bylaws allows the Board of Directors to immediately add directors should the Board of Directors consist of fewer than nine directors.

Further, the way in which the directors' terms are designed to expire in the bylaws also prevents absurd or unworkable results from occurring. Article four, § 2 of the bylaws further provides that "[t]he Directors shall be divided into two (2) classes, with each class consisting of

⁵ General Statutes § 33-1056 (a) provides: "Membership shall be governed by such rules of admission, retention, withdrawal and expulsion as the bylaws shall prescribe, provided all such bylaws shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all members."

one-half (1/2) of the total number of Directors or as close to one-half (1/2) as is practical. To provide continuity on the Board, Directors shall serve for staggered terms of two (2) years each, so that the terms of one class . . . of the Directors shall expire at the end of each Annual Meeting, and the term of the newly-elected class of Directors will begin at the end of the Annual Meeting in the year in which such class is elected. . . .” The staggered nature of the terms prevents a situation as suggested by the plaintiffs, that is, where the Board of Directors would consist of only one member. The way in which the newly-elected directors terms begin at the same time the outgoing directors terms expires also is designed to prevent the board from lacking quorum and the requisite number of directors.

The court next turns to the plaintiffs’ argument that Charter Oak has waived the term limits provision. The court finds this argument unavailing because the plaintiffs have not put forth any evidence beyond the mere assertion that these provisions were waived to demonstrate that the Board of Directors actually intended to waive the term limitations as set forth in the bylaws. Therefore, the plaintiffs have failed to satisfy their burden of proving subject matter jurisdiction via waiver.

Moreover, “[a] corporation must act according to its bylaws. . . . Actions taken in violation of bylaws are void.” *Ranney v. Villager Pond, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-89-0103347-S, 1990 WL 269472, *1, (June 15, 1990, *Flynn, J.*). See also *Wheeler v. Kane*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV- 99-0173007-S, 2000 WL 675673 (May 5, 2000, *Hickey, J.*) (27 Conn. L. Rptr. 164, 166) (finding that any claim regarding the waiver of certain bylaw provisions is without merit because if the Historical Society had intended to permit floor nominations, it could have done so by amending the bylaws). In the present case, the bylaws had been approved as recently as July 28,

2021, so the bylaws could have been amended at that time to remove the term limitations had it actually been the intention of Board of Director's to remove term limits. Article ten of the bylaws also permits the bylaws to be amended by an affirmative vote. Had the Board of Directors actually intended to waive and remove the term limitations provisions they could have, and should have, amended the bylaws. The actions taken by the plaintiffs on November 21, 2023, to remove the term limitation provision are not valid because they were no longer members in good standing of the Board of Directors.

The court last turns to Wood's argument that General Statutes § 33-1089⁶ confers him standing to petition the court to determine who is entitled to be a director on the Board of Directors because he is a director, or at the very least, a person aggrieved. As discussed above, the plaintiffs are no longer members of the Board of Directors. Accordingly, they are not members or directors as required by § 33-1089 (a). The court also finds that the plaintiffs are not persons aggrieved under § 33-1089. The plaintiffs, as former Board of Director members who have exhausted their three consecutive terms, are no longer permitted to serve on the Board of Directors absent a change in the bylaws and would not be impacted by any appointment of new directors in a way that is distinct from any member of the public. Accordingly, they do not have standing under § 33-1089.

⁶ General Statutes § 33-1089 provides in relevant part: "(a) Upon application of any member, director or person aggrieved, the superior court . . . shall forthwith hear and determine the validity of any election or appointment of any director or officer of a corporation and the right of any person to hold such office, and, if any such office is claimed by more than one person, determine the person entitled thereto, and to that end shall determine the voting and other rights of persons claiming the same in respect of such election or appointment, and confirm the election or appointment, order a new election as provided in section 33-1063 or direct other relief as may be just and proper. . . .

(c) The corporation shall be made a party to any proceeding under this section and the court shall have power to enforce the production of any books, papers and records thereof relating to the issue. The court may make such further or other orders respecting service or notice of such application as it deems proper under the circumstances.

For the foregoing reasons, the court finds that the plaintiffs lack standing because they are no longer board members pursuant to article four, § 2 of the bylaws, which varies permissibly from § 33-1085 (e) pursuant to § 33-1001, and, thus, they lack the authority necessary to bring this action. Accordingly, the court lacks subject matter jurisdiction. The motion to dismiss is granted and the case is dismissed.

THE COURT

/s/ #435707

Cesar A. Noble
Judge, Superior Court