

CAUSE NO. DC-15-02572

HEATHER DOBROTT,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	DALLAS COUNTY, TEXAS
GARLAND SOCCER ASSOCIATION,	§	
INC. and	§	
DAVID ARCINIEGA,	§	
	§	
Defendants.	§	95th JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Heather Dobrott ("Dobrott"), and files this Second Amended Original Petition complaining of Defendants, Garland Soccer Association, Inc. ("GSA") and David Arciniega ("Arciniega") and would show the Court as follows:

DISCOVERY LEVEL

1. DISCOVERY IS INTENDED TO BE CONDUCTED UNDER LEVEL 2 OF RULE 190 OF THE TEXAS RULES OF CIVIL PROCEDURE.

DAMAGES AND JURISDICTION

2. Plaintiff seeks monetary relief of \$100,000.00 or less and non-monetary relief. The damages sought by Plaintiff are within the jurisdictional limits of the Court.

PARTIES

3. Plaintiff, Dobrott, is an individual and resident of the State of Texas.
4. Defendant, Garland Soccer Association, Inc., is a Texas non-profit 503(c)(3) charitable association and has appeared in this suit.
5. Defendant, David Arciniega, is an individual and has appeared in this suit.

VENUE

6. Venue is proper in Dallas County, Texas, because all or a substantial part of the events giving rise to Plaintiff's causes of action occurred in Dallas County, Texas.

FACTS

7. Dobrott is a former U6 Girls Director of GSA. She is also a former team manager of a GSA team, former coach of a GSA special needs player, and the parent of a former GSA player.

8. GSA was formed to create and maintain a soccer program for the residents of Garland, Texas. GSA receives and accepts registration fees from players and, based on information and belief, charitable donations from the public.

9. Pursuant to the Bylaws and Rules of GSA and North Texas Soccer Association, Inc. ("NTSSA"): (a) GSA is a member of NTSSA; (b) GSA is required to comply with the Bylaws and Rules of NTSSA; (c) GSA is under the jurisdiction of NTSSA, including matters regarding GSA's misuse of funds and misapplication of applicable Bylaws and Rules; and (d) all administrators, team managers, team members, and participants in GSA are under the jurisdiction of NTSSA.

10. When Dobrott was elected as the Director of GSA in 2012, NTSSA informed her of her fiduciary duties to GSA. Dobrott complied with her fiduciary duties to GSA by reporting, complaining about, and questioning the following incidents, misconduct, and ethical violations which were contrary to GSA Bylaws and Rules and contrary to public policy and which adversely affected GSA and its property (i.e., GSA registration monies) and the safety of GSA's players who are minors:

a. Dobrott reported, complained about, and questioned GSA's misuse of GSA funds when Arciniega continued to retain Jevin, GSA's software provider for GSA

scheduling and registration. Jevin handles all the registration monies of GSA. Arciniega continued to retain Jevin despite the fact that over \$8,000.00 of GSA's registration money was missing while said funds were under Jevin's control.

b. Dobrott reported, complained about, and questioned GSA's retention of a GSA Director whose husband is a Level 2 sex offender and convicted felon who had access, through his wife the GSA Director, to rosters and other records of GSA players who are minors. GSA, through David Arciniega, did not comply with the applicable Whistleblower Policy. Instead, GSA and Arciniega disclosed to the convicted felon and Level 2 sex offender and his wife, the GSA Director, that Dobrott had disclosed the husband's public criminal record to GSA and NTSSA.

c. Dobrott reported, complained about, and questioned that GSA kept its Board Meetings secret and did not publish its Board Member Reports to the members of GSA contrary to applicable GSA Bylaws and Rules.

d. In late October, 2014, Dobrott reported, complained about, and questioned that GSA Director, Angela Bowen-Hearn, had missed seven of the last twelve Board Meetings contrary to GSA Bylaws and Rules. Rather than handle the complaint confidentially under the GSA Whistleblower Policy, Arciniega informed Angela Bowen-Hearn that Dobrott had reported Ms. Bowen-Hearn for missing Board meetings.

11. At all pertinent times, Arciniega exercised oppressive control over GSA in violation of public policy and GSA Bylaws and Rules and acted in an unreasonable, arbitrary, and capricious manner by:

(a) controlling the hiring and retention of GSA vendors, such as Jevin even though \$8,000 of GSA money was missing while the funds were under Jevin's control;

(b) retaining a GSA Director who allowed her husband, a convicted felon and Level 2 sex offender, access to the records of GSA players who are minors;

(c) violating the applicable GSA Whistleblower Policy when Dobrott reported misconduct;

(d) failing to assure that GSA kept complete records of its affairs and made the records available to any GSA Member as required by GSA Bylaws;

(e) failing to establish a GSA Appeals & Disciplinary Committee as required by the GSA Bylaws; and

(f) failing to assure in compliance with GSA Bylaws:

1. the preparation and notice of charges concerning infractions alleged by Plaintiff of GSA Bylaws and Rules;

2. the investigation of infractions alleged by Plaintiff of GSA Bylaws and Rules;

3. the holding of hearings on alleged GSA Bylaws and Rules infractions alleged by Plaintiff; and

4. requiring that the A & D Committee make findings after the hearing on infractions of GSA Bylaws and Rules alleged by Plaintiff.

12. In December 2014, GSA did not re-elect Dobrott as a Director for an additional term. Based on information and belief, Dobrott was defeated due to proxies obtained by Arciniega which proxies Arciniega obtained by defaming Dobrott and by Arciniega rigging the election. Despite her request for an investigation of the irregularities and illegalities in the GSA election process after she was not re-elected, GSA and Arciniega failed and refused to provide Plaintiff with due process regarding the GSA election of directors as required by GSA Bylaws and applicable law. Dobrott has not been heard and was not allowed an opportunity to be heard about the irregularities and illegalities in the election which resulted in Dobrott being ousted as a GSA director, a position which constitutes a valuable property right to Dobrott. Dobrott's position as a GSA Director constituted a valuable property right in that this position provided Dobrott valuable work and leadership experience that would assist her in obtaining employment.

13. The GSA Bylaws in effect at all pertinent times require that GSA have an Appeals and Disciplinary ("A&D") Committee composed of the Vice President as Chairman and four (4) Association Coaches in good standing. The GSA Bylaws provide many specific duties of the A& D Committee as set out in Exhibit "A" attached hereto. Contrary to the GSA Bylaws, GSA and Arciniega failed and refused to have an A&D Committee in place for GSA or to otherwise provide Plaintiff due process regarding Plaintiff's allegations of irregularities and illegalities in

the December 2014 election and the other infractions of the GSA Bylaws and Rules as detailed in Paragraphs 10(a)-(d), 11, and 12 above.

14. The GSA Bylaws provide: “The Board shall cause to be kept a complete record of its corporate affairs and shall make such records available for inspection by any member.” Dobrott reported and questioned when the GSA Board, led by Arciniega, failed to comply with the duty to retain the complete record of its corporate affairs and make the records available for inspection.

15. The NTSSA Whistleblower Policy applicable to GSA provides in pertinent part as follows:

The...Code of Ethics and Conduct (“Code”) requires directors, officers, and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As representatives of the Organization, directors, officers, and employees must practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws and regulations. It is the responsibility of all directors, officers, and employees to comply with the Code and to report violations or suspected violations in accordance with this Whistleblower Policy. No director, officer, or employee who in good faith reports a violation of the Code shall suffer harassment [or] retaliation...Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

GSA, through Arciniega, did not comply with the Whistleblower Policy as stated in Paragraphs 10(b) and 10(d) above. Rather, GSA, through Arciniega, failed to keep Dobrott’s reports confidential and harassed and defamed Dobrott for making the reports.

16. The NTSSA Code of Ethics applicable to GSA and for member associations, including GSA, provides in pertinent part as follows:

This Code of Ethics has been developed to clarify and distinguish approved and accepted professional ethical and moral behavior from that which is detrimental to the development of the sport of soccer...Member Association’s Administrators must always refrain from criticizing other Administrators in the presence of others...Professional

respect should be mutual and there should be no demeaning dialogue or gesture between Administrators.

Contrary to the Code of Ethics, Arciniega criticized Dobrott frequently at GSA Board meetings and caused to be filed against Dobrott a meritless, arbitrary, and capricious “A & D Charge” that was heard by the GSA Board of Directors and not the A & D Committee as the GSA Bylaws require for “instructing in the placement of a new coach, along with his sons, to an existing team without following proper procedures.” Arciniega was also the complainant on a “No Confidence Petition” against Dobrott that was meritless, arbitrary, and capricious which was filed against Dobrott in retaliation for Dobrott supporting the candidate running against Arciniega in the 2013 spring GSA election.

CAUSES OF ACTION

OPPRESSIVE CONDUCT/BREACH OF FIDUCIARY DUTY

17. Defendants engaged in wrongful conduct toward Dobrott as described above. Further, Arciniega exercised oppressive control over GSA in violation of public policy to the detriment of Dobrott and acted in an unreasonable, arbitrary, and capricious manner toward GSA and Dobrott.

18. Defendants have not dealt fairly in GSA’s affairs to the prejudice of Dobrott. Defendants have not observed the standards of good faith and fair dealing and the standards in the GSA and NTSSA Bylaws and Rules on which Dobrott was entitled to rely.

19. Defendants have breached their fiduciary duty to Dobrott by their oppressive conduct toward Dobrott.

20. As a result of the breach of fiduciary duty owed by Defendants to Dobrott, Dobrott has suffered damages in excess of the minimum jurisdictional limits of the Court.

BREACH OF CONTRACT

21. The GSA and NTSSA Bylaws and Rules constitute a contract between GSA and Dobrott.

22. GSA breached this contract with Dobrott as described above.

23. As a result of the breach of contract by GSA, Dobrott has been damaged in an amount in excessive of the minimum jurisdictional limits of the Court.

24. Dobrott is entitled to recover her reasonable and necessary attorney's fees in the trial court and on appeal from GSA due to GSA's breach of contract under Section 38.001 of the Tex. Civ. Prac. & Rem. Code.

DEFAMATION

25. Based on information and belief, Arciniega published statements of fact about Dobrott to third parties which statements were defamatory and false. Arciniega defamed Plaintiff without the authority of GSA, or alternatively, with the authority of GSA in which case GSA is also liable for defamation.

26. Based on information and belief, Arciniega acted with malice in defaming Dobrott.

27. As a result of the defamation of Dobrott by Arciniega, Dobrott has sustained damages in an amount in excess of the minimum jurisdiction of the Court, including damages to her reputation and the loss of a valuable property right of her position as a Director of GSA.

DEPRIVATION OF DUE PROCESS

28. GSA, led by Arciniega, has not afforded Plaintiff due process regarding her complaints about GSA and Arciniega and her ouster as a GSA Director in the December, 2014

election which election was void due to irregularities and illegalities. Specifically, GSA, led by Arciniega, has failed to give Plaintiff notice and an opportunity to be heard in an orderly proceeding adapted to the nature of Plaintiff's complaints. Alternatively, GSA, led by Arciniega, has failed to reach a decision, make findings or reach a conclusion regarding Plaintiff's complaints as required by GSA Bylaws and applicable law.

29. Plaintiff has exhausted all her internal remedies available to her. Alternatively, Plaintiff has been unable to exhaust any internal remedies available to her because GSA, led by Arciniega, failed to make a decision, make findings on, or reach a conclusion regarding Plaintiff's complaints.

DECLARATORY JUDGMENT

30. Dobrott seeks a declaratory judgment pursuant to Chapter 37 Tex. Civ. Prac. & Rem. Code that the December 2014 election in which Dobrott was defeated for the position of Director of GSA was improper, irregular, illegal and not in compliance with GSA Bylaws and Rules.

31. Dobrott further seeks a declaratory judgment that the December 2014 election is void and that Dobrott is entitled to reinstatement to her position as a Director of GSA.

32. Dobrott also seeks her reasonable and necessary attorney's fees pursuant to Section 37.009 Tex. Civ. Prac. & Rem. Code.

PRAYER

WHEREFORE, based on the foregoing, Plaintiff, Heather Dobrott, respectfully requests that Defendants be cited to appear and answer, and that on final trial, Plaintiff have judgment against Defendants for the following:

1. Damages against Defendants in excess of the minimum jurisdictional limits of the Court;

2. A declaratory judgment that the December 2014 election of Directors of GSA is void and Dobrott is reinstated as a Director of GSA;
 3. Pre-judgment and post-judgment interest at the highest legal rate;
 4. Reasonable and necessary attorney's fees in the trial court and on appeal;
- and
5. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

LAW OFFICE OF FOSTER & FOSTER, P.C.

/s/ Susan Johnson Foster

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Certificate of Service

I certify that a true and correct copy of the above and foregoing was served on counsel of record, Mark E. Smith, via facsimile (214-741-7548) on this 31 day of March, 2016.

/s/Susan Johnson Foster

Susan Johnson Foster

EXHIBIT “A”

A. Committee Procedure

1. Notice of Alleged Infraction of the By-Laws or the Rules: Upon receipt of written notification, the A&D Committee shall conduct a confidential investigation by questioning any person with first-hand knowledge of the facts. The investigation must include an interview with the accused unless it can be determined no further action, including the preferring of the charge(s) is necessary or warranted. For the protection of the parties who may be innocent, the investigation will avoid revealing details as much as possible.
2. Preparation of the Charge(s): If necessary, the Committee will prepare the charge(s) that will be brought against the accused and the specification(s) that will be addressed by the Committee.
 - a. The charge(s) sets forth the “offense” of which the accused is alleged to be guilty.
 - b. The specification(s) states “what” the accused is alleged to have done.
3. Notification of the Charge(s): The accused is to be notified by mail, a letter notifying them of the date, hour, and place of the A&D hearing, containing an exact copy of the charge(s) and specification(s) and the statement “And is hereby cited to appear” at this meeting. The Committee chairman shall retain a copy of this notification. A copy of this notification shall be mailed to the division Director.
4. The procedure of the A&D hearing:
 - a. The hearing will be called to order by the Chairman.
 - b. The Chairman will read the charge(s) and specification(s).
 - c. The Chairman will provide copies of all documents to all participants.
 - d. The Chairman will advise all participants of the decorum of the hearing and it shall be maintained.
 - e. The Chairman will inform the participants of the time allotted for each phase of the hearing and will call upon:

- The Appellant's, making charge, opening statement.
- The Appellee's, being charged, opening statement.
- The Appellant for presentation of argument, calling of witnesses and cross-examination of Appellee through the Chairman.
- The Appellee for presentation of argument, calling of witnesses and cross-examination of Appellant through the Chairman.
- The Committee members for cross-examination of the Appellee and Appellant.
- The Appellant for a closing statement.
- The Appellee for a closing statement.

5. The Committee's Findings

- a. The Chairman then states the question on the findings as to the guilt of the Appellee as prescribed in the charge(s) and specifications(s) as preferred against the Appellee.

NOTE: The charge(s) and specification(s) can be amended to conform to facts brought out in the hearings, but not in such a way as to find the Appellee guilty of a charge(s) for which he has not been tried.

- b. Each of the specifications, and then the charge, is read, opened to debate, and voted on separately. If the Appellee is found guilty of one or more of the specifications but not of the charge, a lessor (*sic*) charge should be moved and voted on.
- c. If the Appellee is found guilty, the Chairman announces that the next item of business is the determination of the penalty.

6. The Penalty

- a. The determination of the penalty shall be made in the form of a motion by a Committee member. This motion is debatable and amendable by other Committee members. A Vote on this motion for penalty shall be taken by the Committee members and the results of the vote shall be recorded by the Chairman.

NOTE: If the Appellee is found guilty of a violation that states a specific penalty is to be imposed, the Committee may enforce the prescribed penalty and/or additional penalties that the Committee feels are warranted based upon the severity of the violation as revealed in the Committee hearing.

- b. If the Appellee is found not guilty, the Chairman shall record the findings and the Appellee shall be declared so.

B. Appellate Procedures:

- 1. Any coach or player may appeal an A&D Committee finding to the GSAI Board by the following:
 - a. File a written notice with the GSAI Secretary within five (5) calendar days of the receipt of written notification of the A&D Committee ruling.
 - b. Include a \$15.00 deposit which will be refunded only if the GSA Board overturns the ruling by the A&D Committee.
 - c. Upon receipt of the written notice, the board shall schedule the time and place of the hearing for the appeal of the A&D ruling. The Board shall immediately notify the following:
 - The coach of the team or individual(s) against or for whom the appeal is filed; and
 - The Chairman and members of the A&D Committee, none of which will have a vote in the appellate procedure or be present during closed deliberation.
- 2. Any coach or player may appeal a finding of the GSAI Board to the Appeals and Disciplinary Committee of NTSSA as prescribed by the NTSSA Rules.

C. Violations:

- 1. Upon written receipt of an alleged violation of the Bylaws and/or rules, the A&D Committee procedures shall be followed.
- 2. A coach, player, spectator, Board Member, or any other member of the Association that is found guilty of violating the rules and/or Bylaws of NTSSA or GSAI shall be penalized the prescribed penalty, if stated, and/or any additional penalty imposed by the A&D Committee.