

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

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In the Matter of the Application of  
SUSAN SERINO, ANN BOEHM, WALTER DOYLE,  
DONNA DOYLE and JAMES LANGAN,

Petitioners,

DECISION AND  
ORDER

-against-

Index No. 3229/11

BRICE J. REED and JOHN DOE,

Respondents,

For Judgment Pursuant to Article 12 of the  
Election Law.

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PAGONES, J.D., A.J.S.C.

Petitioners initiated the instant proceeding seeking a determination that the respondents established a political committee that is subject to the mandates of Article 14 of the Election Law. Respondent Brice J. Reed filed a motion to dismiss the petition based on CPLR §§ 3211(a)(7) and (8). Respondent Reed has established entitlement to judgment dismissing the petition pursuant to CPLR § 3211(a)(7).

Initially, the court notes that respondent Reed's contention that the court lacks personal jurisdiction over him based on the petitioners' alleged improper commencement of this special proceeding is without merit. Although Election Law §16-116 provides that an election proceeding shall be heard "upon such notice to such officers, persons or committees as the court or justice shall direct", court direction is not necessary to

commence an election proceeding. (Matter of Lamb v. Gada, 1 Misc. 2d 398 [NY Sup. Ct. 1955], *aff'd* 1 AD2d 954 [2<sup>nd</sup> Dept. 1956].) Therefore, the petitioners' commencement of the special proceeding by service of a notice of petition instead of an order to show cause does not fail to convey personal jurisdiction over the respondents. To hold otherwise would convey upon an order to show cause, which merely prescribes what notice should be given and the persons who are to be served therewith, greater sanctity than is accorded to the process. (Id.)

It is well settled that on any motion pursuant to CPLR Rule 3211, the court "must take the allegations (of the petition) as true and resolve all inferences which reasonably flow therefrom in favor of the pleader." (Cron v. Hargro Fabrics, Inc., 91 NY2d 362, 366 [1998].) Vague and conclusory allegations are generally insufficient to sustain a claim. (LoPresti v. Mass. Mut. Life Ins. Co., 30 AD3d 474 [2<sup>nd</sup> Dept. 2006]; Goode v. Charter Oak Fire Ins. Co., 2005 NY Slip Op 51245U [1<sup>st</sup> Dept. 2005]; Fowler v. Am. Lawyer Media, Inc., 306 AD2d 113 [1<sup>st</sup> Dept. 2003].) To dismiss a cause of action pursuant to CPLR Rule 3211(a)(7) on the ground that the petitioners have failed to state a cause of action, the court must liberally construe the petition and accept all facts as alleged therein to be true, accord the petitioners the benefit of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.

(Fishberger v. Voss, 51 AD3d 627 [2<sup>nd</sup> Dept. 2008].)

Respondent Reed has established entitlement to judgment dismissing the petition for failure to state a cause of action. Election Law §14-100(1) defines a political committee, in relevant parts, as

"...any corporation aiding or promoting and any committee, political club or combination of one or more persons operating or co-operating...to aid or take part in the election or defeat of a candidate for public office or to aid or take part in the election or defeat of a candidate for nomination at a primary election or convention...but nothing in this article shall apply to any committee or organization for the discussion or advancement of political questions or principles without connection with any vote..."

Election Law §14-100(7) defines a candidate as "an individual who seeks nomination for election, or election..." and provides that

"...an individual shall be deemed to seek nomination for election, or election, to an office or position, if he has (1) taken the action necessary to qualify himself for nomination for election, or election, or (2) received contributions or made expenditures, given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to any office or position at any time whether in the year in which such contributions or expenditures are made or at any other time."

In the instant proceeding, the petitioners failed to sufficiently allege facts which would warrant judgment in their favor on the issue of the respondents' alleged political committee. Although the petitioners specifically allege that the



respondents formed a political committee that seeks the defeat of petitioner Serino, the petitioners failed to allege any specific instances of the respondents purported attempts to defeat a candidate for public office. Similarly, the petitioners' general allegations that the respondents seek the defeat of certain petitioners and other members of the Hyde Park Republican Committee are insufficient to sustain a cause of action. Moreover, even if the court were to determine there were specifically alleged acts on behalf of the respondents, the petitioners failed to allege that any of the petitioners are "candidates" as defined in Election Law §14-100, claiming only that petitioner Serino plans to run for reelection.

Additionally, the postcard mailings allegedly sent by the respondents cannot be said to aid or take part in the election or defeat of a candidate for public office or to aid or take part in the election or defeat of a candidate for nomination at a primary election or convention. While some may certainly view the respondents' actions as distasteful and objectionable, that alone is an insufficient basis to award the petitioners the relief they request. Moreover, the petitioners' conclusory avowal that the content of respondents' website is "primarily scandalous, defamatory images and allegations" is insufficient to sustain a cause of action.

The petitioners' petition is devoid of any specific factual

allegations that would sustain a claim against the respondents as to the alleged formation of a political committee. Therefore, it is ordered that Respondent Reed's motion to dismiss for failure to state a cause of action is granted and the petitioners' petition is dismissed.

In light of the court's determination, respondent Reed's remaining contentions are rendered academic.

The Court read and considered the following documents upon these applications:

PAGES NUMBERED

1. Notice of Petition.....1  
Verified Petition.....1-6  
Exhibits.....1-7
2. Notice of Motion.....1-2  
Affidavit-Brice Reed.....1-10  
Exhibits.....1-3

The foregoing constitutes the decision and order of the Court.

Dated: Poughkeepsie, New York  
June 17, 2011

ENTER  
  
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