

STATE OF NEW MEXICO
COUNTY OF COLFAX
EIGHTH JUDICIAL DISTRICT COURT
PRESIDING JUDGE: EMILIO J. CHAVEZ
No. D-809-CV-2021-00066

RICHARD E. CLARK, JR., ET. AL,
Plaintiffs,

V.

BOARD OF DIRECTORS OF ASSOCIATION OF ANGEL FIRE PROPERTY OWNERS,
INC. Defendant.

ORDER GRANTING MOTION TO DISMISS COUNTERCLAIM


THIS MATTER having come before the Court for hearing on the Plaintiff's Motion to Dismiss Counterclaim for Failure to State a Claim upon which Relief can be Granted, the Court having reviewed the pleadings, exhibits and being otherwise fully advised in the premises,

FINDS:

1. The Court has jurisdiction over the parties and the subject matter.
2. The counterclaim seeks a declaratory judgment that candidates that have been employees or received compensation from Angel Fire Resort (Developer) are disqualified from serving as directors on the AAFPO Board of Directors.
3. None of the plaintiffs are directors of AAFPO, but some are currently running for the open positions on the board of directors.
4. The defendants' counterclaim alleges that the plaintiffs are in violation of AAFPO's By-Laws Article VI, Sec 1, which provides, "[n]o director shall be an employee of, nor receive compensation for any services he/she renders to, the Developer or its successors."
5. The language of AAFPO's By-Laws Article VI, Sec 1 conflict provision is not ambiguous. Sec 1 specifically prohibits a director from simultaneously being an employee or receiving compensation from the resort and serving as a director.
6. There are protections regarding the concerns raised by the defendants in the Nonprofit Corporation Act.
7. NMSA 1978 § 53-8-25.1 reads, "[a] director shall perform his duties as a director including his duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in or not opposed to the best interests of the corporation and with such care as an ordinarily prudent person would use under similar circumstances in a like position. . ."

8. NMSA 1978 § 53-8-25.1 places a burden on the director to act in the best interests of AAFPO and not the resort. A director could be personally liable for monetary damages should they willfully or recklessly violate NMSA 1978 § 53-8-25.1. *See* NMSA 1978 §53-8-25.2.
9. However, nothing in the Nonprofit Corporation Act or AAFPO's By-Laws prohibits candidates from being employees or receiving compensation from the resort prior to being elected to the AAFPO Board of Directors.

IT IS THEREFORE ORDERED that for the reasons stated above the Motion to Dismiss the Counterclaim is GRANTED.


EMILIO J. CHAVEZ
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned Employee of the District Court of Colfax County, New Mexico, do hereby certify that I served a copy of this document to all parties listed.

By: Veronica Ponce Caldera

Date: 9/15/2021

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