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April 19, 2024

Honorable Doug Welborn
Clerk of Court
Nineteenth Judicial District Court
300 North Boulevard
Baton Rouge, LA 70801

Re: Belinda Parker Brown, Charlie Square, Tita M. McDonald, Tim Holmes, Chief Linda Tahane, Hvishi Opa Luksi, Katrina Brown v. Louisiana State Police Commission, Eulis Simien, Jr., Oliver Jenkins, Bernell Nevil Jr., Tony Pierite, Lt. Monty Montelongo, Jared Caruso-Riecke, Mark "Aubrey" Cole
Suit No. 745576, Docket 26; 19th JDC; Parish of East Baton Rouge; State of Louisiana

Dear Mr. Welborn:

Enclosed please find one original and two copies of Defendants' Peremptory Exception of No Cause of Action, Rule to Show Cause, and Memorandum in Support of Defendants' Peremptory Exception of No Cause of Action, which we submit to you today for filing into the suit record. Please return one date-stamped copy to us for our records, and date stamp the second copy so that we can walk up that copy to Judge Moore.

We ask you to serve the Rule to Show Cause upon those individuals listed on same and also request that you please give notice to M. Lenore Feeney.

Since we represent the Louisiana State Police Commission, which is a state entity, and its board members, we understand that no fees are due at this time.

If you have any questions, please contact us at the phone number listed above.

Sincerely,

A handwritten signature in blue ink that reads "M. Lenore Feeney".

M. Lenore Feeney

MLF:mh
Attachments

Hon. Doug Welborn
April 19, 2024
Page 2

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19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

BELINDA PARKER BROWN, CHARLIE	* NUMBER: 745576
SQUARE, RITA M. MCDONALD, TIM	*
HOLMES, CHIEF LINDA TAHANE,	* DIVISION: "26"
HVISHI OPA LUKSI, KATRINA BROWN	*

VERSUS

LOUISIANA STATE POLICE	*
COMMISSION, EULIS SIMIEN, JR.,	*
OLIVER JENKINS, BERNELL NEVIL JR.,	*
TONY PIERITE, LT. MONTY	*
MONTELONGO, JARED CARUSO-	*
RIECKE, MARK "AUBREY" COLE	*

DEFENDANTS' PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION

NOW INTO COURT, through undersigned counsel, come defendants, the Louisiana State Police Commission (LSPC), Eulis Simien, Jr., Oliver Jenkins, Bernell Nevil, Jr., Tony Pierite, Lt. Monty Montelongo, Jared Caruso-Riecke, and Mark "Aubrey" Cole, who assert the following peremptory exception of no cause of action to the claims of the Plaintiffs.

The Petition fails to establish the elements of a cause of action for violation of the Open Meetings Law (La. R.S. 42:11, *et seq.*). Plaintiffs' lawsuit alleges that a letter (containing the electronic signatures of former and current Commissioners of the LSPC) addressed and sent to a person not alleged to be a member of the classified state police service and concerning a subject matter over which the LSPC had no jurisdiction, supervision or control was an alleged violation of the Open Meetings Law. Plaintiffs did not and cannot allege there was a meeting by any members of the LSPC. Nor did they allege that a quorum of the LSPC members were present at any meeting. Both of these allegations would be necessary to establish a potential claim under the Open Meetings Law. Further, even if these allegations had been made, Plaintiffs do not allege facts which would have required a public meeting in order to send the letter alleged in the petition. Per the allegations, this letter was addressed to a person over whom the LSPC did not maintain jurisdiction, supervision, or control, and that concerned a matter over which the LSPC did not maintain jurisdiction, supervision, or control. Finally, Plaintiffs' conclusory allegations of "proxy voting" and "secretive balloting" that assume and conclude there were discussions among the


individual defendants should not be considered by the Court as facts. The allegations do not and could not truthfully allege a discussion among the Commissioner either directly or through the letter.

The Peremptory Exception of No Cause of Action tests the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. La. Code Civ. P. art. 927, *Moreno v. Entergy Corp.*, 2010-2268 (La. 2/18/11), 64 So.3d 761, 762. The Plaintiffs' Petition fails to establish a cause of action against the Defendants, and as such should be dismissed with prejudice.

WHEREFORE, Defendants, the Louisiana State Police Commission, Eulis Simien, Jr., Oliver Jenkins, Bernell Nevil, Jr., Tony Pierite, Lt. Monty Montelongo, and Jared Caruso-Riecke, Mark "Aubrey" Cole, respectfully pray that their Peremptory Exception of No Cause of Action be maintained and Plaintiffs' claims against the Defendants be dismissed with prejudice, at Plaintiffs' costs.

Respectfully submitted,

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.

By 
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 Ryan K. French, Bar # 34555
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was this day emailed and mailed, postage prepaid, to the following:

Belinda Parker-Brown 1622 11th Street Slidell, LA 70458 Via: belindabrownlld@yahoo.com	Charlie Square 4480 Pontchartrain Drive, Apt. 105 Slidell, LA 70458 Via: Posquale9852@yahoo.com
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<p>Hvishi Opa Luksi 1527 Gause Blvd #298 Slidell, Louisiana 70458 Via: chieftesshvishi@gmail.com</p>	<p>Chief Linda Tahane 60179 Mirmar Street Lacombe, Louisiana 70445 Via: Lau8814854@aol.com</p>
<p>Katrina Brown 1622 11th Street Slidell, Louisiana 70458 Via: nbrown111035@gmail.com</p>	

Baton Rouge, Louisiana this 19th day of April, 2024.



M. Lenore Feeney

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

BELINDA PARKER BROWN, CHARLIE SQUARE, RITA M. MCDONALD, TIM HOLMES, CHIEF LINDA TAHANE, HVISHI OPA LUKSI, KATRINA BROWN

* NUMBER: 745576
*
* DIVISION: "26"
*
*

VERSUS

*

LOUISIANA STATE POLICE COMMISSION, EULIS SIMIEN, JR., OLIVER JENKINS, BERNELL NEVIL JR., TONY PIERITE, LT. MONTY MONTELONGO, JARED CARUSO-RIECKE, MARK "AUBREY" COLE

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RULE TO SHOW CAUSE

Considering the foregoing Peremptory Exception of No Cause of Action filed on behalf of Defendants, the Louisiana State Police Commission, Eulis Simien, Jr., Oliver Jenkins, Bernell Nevil, Jr., Tony Pierite, Lt. Monty Montelongo, Jared Caruso-Riecke, and Mark "Aubrey" Cole:

IT IS ORDERED that Plaintiffs, Belinda Parker Brown, Charlie Square, Rita M. McDonald, Tim Holmes, Chief Linda Tahane, Hvishi Opa Luksi, and Katrina Brown appear at the Nineteenth Judicial District Courthouse at _____ on the _____ day of _____, 2024, and show cause, if they can, why the Peremptory Exception of No Cause of Action should not be granted.

Baton Rouge, Louisiana, this _____ day of _____, 2024.

HONORABLE RICHARD "CHIP" MOORE

[PLEASE SEE SERVICE INFORMATION ON THIS PAGE AND NEXT PAGE]

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PLEASE NOTICE:

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JUDGE, NINETEENTH JUDICIAL DISTRICT COURT

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

BELINDA PARKER BROWN, CHARLIE	* NUMBER: 745576
SQUARE, RITA M. MCDONALD, TIM	*
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HVISHI OPA LUKSI, KATRINA BROWN	*
	*
VERSUS	*
	*
LOUISIANA STATE POLICE	*
COMMISSION, EULIS SIMIEN, JR.,	*
OLIVER JENKINS, BERNELL NEVIL JR.,	*
TONY PIERITE, LT. MONTY	*
MONTELONGO, JARED CARUSO-	*
RIECKE, MARK "AUBREY" COLE	*

**MEMORANDUM IN SUPPORT OF PEREMPTORY EXCEPTION
OF NO CAUSE OF ACTION**

MAY IT PLEASE THE COURT:

This Memorandum in Support of Peremptory Exception of No Cause of Action is submitted on behalf of the Louisiana State Police Commission, Eulis Simien, Jr., Oliver Jenkins, Bernell Nevil, Jr., Tony Pierite, Lt. Monty Montelongo, Jared Caruso-Riecke, Mark "Aubrey" Cole (collectively referred to as "Defendants"). Defendants seek dismissal of Plaintiffs' claims with prejudice for the following reasons.

BACKGROUND

The Louisiana State Police Commission ("LSPC") is a Constitutional body with authority like the State Civil Service Commission, except that its authority and jurisdiction is limited to the classified state police service only.¹ Pursuant to the provisions of the Louisiana Constitution, the LSPC conducts monthly, public meetings in which it addresses matters of discipline of state

¹ The LSPC was established in La. Const. Art. 10, §43, and was "vested with broad and general rulemaking and subpoena powers for the administration and regulation of the classified state police service, including the power to adopt rules for regulating employment, promotion, demotion, suspension, reduction in pay, removal, certification, qualifications, political activities, employment conditions, compensation and disbursements to employees, and other personnel matters and transactions;...and generally to accomplish the objectives and purposes of the merit system of state police service as herein established." La. Const. Art. 10, §48(A)(1).

troopers and issues concerning their pay, certifications and qualifications among other personnel matters.²

Plaintiffs' lawsuit alleges that a letter, addressed and sent to a person not alleged to be a member of the classified state police service that contains the electronic signatures of the named Commissioners, is proof that the LSPC and certain named, former and/or current members of the Commission ("Commissioners") violated the Open Meetings Law. Defendants deny that there was a violation of the Open Meetings Law and show that Plaintiffs failed to allege or show there was a meeting. Nor did they allege, that a quorum of the LSPC Commissioners participated in any meeting. Finally, the Plaintiffs failed to allege or show that the letter which is the subject of the petition was addressed to anyone over whom the LSPC had jurisdiction, supervision, or control or that the content of the letter concerned a matter over which the LSPC had jurisdiction, supervision, or control such that a public meeting might be required. Because the content of the letter addressed matters outside the jurisdiction, supervision, and control of the LSPC, a public meeting was not required. Finally, Defendants submit that Plaintiffs conclusory allegations should not be considered by this Court in ruling on this Peremptory Exception of No Cause of Action.

LAW AND ARGUMENT

Plaintiffs' lawsuit seeks attorney fees, costs, and civil penalties for an alleged violation of the Open Meetings Law, La. R.S. 42:11, *et seq.* (hereafter sometimes referred to as "the Open Meetings Law"). Plaintiffs obtained a letter³ addressed to a candidate for political office, that contained the electronic signatures of the individual named defendants and concluded that the sending of the letter constituted a violation of the law.

To obtain a judgment awarding attorney fees and costs of litigation, Plaintiffs must allege and prove that the Defendants engaged in public business *through a meeting* that was not appropriately before the public.⁴ A "meeting" is defined as "the *convening of a quorum* of a public

² La. Const. Art. 10, §48 A.

³ Although the letter is attached as P-1 to the Petition, it should not be considered by the Court on a Peremptory Exception of No Cause of Action, La. Code Civ. P. art. 931.

⁴ La. R.S. 42:14 A, La. R.S. 42:28.

body to deliberate or act *on a matter over which the public body has supervision, control, jurisdiction, or advisory power*. It shall also mean the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.”⁵

Additionally, to obtain civil penalties against each named individual, Plaintiffs must allege and prove that each Commissioner *knowingly and willfully participated in a meeting* conducted in violation of the Open Meetings Law.⁶

The Plaintiffs have not alleged in their Petition, nor can they prove, there was a “meeting” or that a quorum of the LSPC Commissioners participated in a “meeting” in violation of the Open Meetings Law. Further, Plaintiffs have not alleged that the letter concerned a matter over which the LSPC had jurisdiction, supervision, or control or that the person to whom the letter was addressed was a person over whom the LSPC had jurisdiction, supervision, or control such that a public meeting might be required.

Paragraph 3 of the Petition alleges that “...each Member of the LSPC began a process of signing a letter addressed to Mr. Collin Sims, a candidate for District Attorney in St. Tammany Parish...” Paragraph 4 of the Petition alleges that “[t]he letter reference[d] billboards depicting advertising on behalf of the Sims campaign” with “a photo of Collin Sims and, to his right, a photo taken at a press conference after the murder conviction involving a Defendant who took the life of Mandeville Police Captain Vincent Liberto while [the latter was] serving in the line of duty. The family of the late Captain Liberto, along with numerous law-enforcement officers who assisted in the prosecution appear in the photo.” The LSPC has no jurisdiction, supervision, or control over the content of Collin Sims campaign material, nor do Plaintiffs allege that Collin Sims was a classified member of the state police service, the only group over whom the LSPC has jurisdiction, supervision, or control;⁷ therefore, Plaintiffs cannot show that a public meeting was required by the Open Meetings Law.

⁵ La. R.S. 42:13(2)

⁶ La. R.S. 42:28

⁷ La. Const. Art. 10, §§41, 42, 48(A).

Had Plaintiffs alleged this letter was sent to a member of the classified state police service (a state trooper), and that the letter directed a state trooper to cease and desist from engaging in prohibited political activity, then such a letter would have addressed a matter over which the LSPC maintained jurisdiction, supervision, and control. Had such a letter been sent, it would have related to a matter or a person over which the Commission and its members would have had jurisdiction, supervision, or control. However, this letter does not. But even if a letter relates to a matter over which the Commission and its members have jurisdiction, supervision, or control, there is no violation unless there is a gathering of a quorum of the LSPC or at least discussions beyond those alleged in the petition by a quorum of the Commission. The petition not only fails to allege a quorum, it fails to allege a gathering, group discussion or even communication of thoughts about whether the letter should be signed. In short, it fails to allege a violation of the Open Meetings Law even if this were a matter over which the Commission and its members have jurisdiction, supervision, or control.

“An exception [raising the objection] of no cause of action tests ‘the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading.’” *Moreno v. Entergy Corp.*, 2010-2268 (La. 2/18/11), 64 So.3d 761, 762, citing, *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234 (La. 1993). The Third Circuit, in *Taylor v. Leger Construction, LLC*,⁸ explained:

The peremptory exception of no cause of action is provided for by La. Code Civ. P. art. 927. When used in this context, a cause of action ‘is defined as the operative facts that give rise to judicially assert the action against the defendant.’ *Ramey v. DeCaire*, 03-1299, p. 7 (La. 3/19/04), 869 So.2d 114, 118 (citing *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234 (La. 1993)). Pursuant to La. Code Civ. P. art. 931, the parties may not introduce evidence to support or controvert an exception of no cause of action. Instead, the trial court reviews the petition and accepts well-pleaded allegations of fact as true and determines whether, on the face of the petition, the plaintiff is legally entitled to the relief he or she seeks. *Ramey*, 869 So.2d 114.⁹

⁸ 2010-749(La. App. 3 Cir. 12/9/10), 52 So.3d 1098

⁹ *Taylor*, 52 So.3d at 1101.

The jurisprudence is clear that **conclusory allegations are not to be considered** on an exception of no cause of action.¹⁰ Pleadings that establish only possibility, speculation, or unsupported probability do not suffice to establish a cause of action.¹¹

For purposes of the instant Exception, the “facts” are those as alleged by the Plaintiffs in their Petition. Yet in paragraphs 10 and 13 of the Petition, without providing any factual allegations to support their conclusionary statements, the Plaintiffs alleged that Defendants “engaged in secretive proxy voting” and “secretive balloting” and based on these conclusory allegations aver that the Open Meetings Law was violated. Plaintiffs have engaged in pure speculation in their Petition. There were no allegations, nor could there be, that the Commissioners engaged in discussion with one another regarding the signing of the letter. There is no evidence whatsoever that a quorum of members of the LSPC gathered for a “meeting” and “voted” in any way with regard to the sending of this letter. The allegations do not and could not truthfully allege a discussion among the Commissioner either directly or through the letter. Plaintiffs simply used the legal language from the Open Meetings Law statutes (“secretive proxy voting” and “secretive balloting”) and restated those words as conclusory allegations. Aside from the fact that Plaintiffs failed to allege that the letter concerned matters over which Defendants maintained jurisdiction, supervision or control or that the letter was addressed to someone over whom Defendants maintained jurisdiction, supervision or control, Plaintiffs, through conclusory allegations, allege that the electronic signatures are somehow proof of “secretive balloting” or “proxy voting” over matters that would not have required a vote of the LSPC to begin with. Plaintiffs use conclusory allegations of “secretive balloting” or “proxy voting” to somehow show there were discussions in a meeting containing a quorum of the individual Defendants; however, these conclusory allegations cannot be used to substantiate the elements of a cause of action.

Louisiana jurisprudence is clear that legal conclusions are not well-pled factual allegations; therefore, legal conclusions may not be considered “facts” when analyzing an exception of no cause of action. The insufficient factual allegations in paragraphs 10, 11 and 13 of the Petition are

¹⁰ *Holliday v. Est. of Beaubouef*, 2022-1112 (La. App. 1 Cir. 4/18/23), 367 So.3d 98; *Baker v. LSU Health Sciences Ctr. Inst. of Pro. Educ.*, 39,200 (La. App. 2 Cir. 12/15/04), 889 So. 2d 1178; *Fanto v. Dantro*, 2011-1092 (La. App. 4 Cir. 11/23/11), 79 So.3d 475.

¹¹ *Todd v. State through Dept. of Social Servs. Office of Community Services*, 699 So.2d 35 (La. 1997).


fatal to Plaintiffs' ability to establish a violation of the Open Meetings Law. Defendants ask this Court to rule that legal conclusions asserted as fact are not well-pled factual allegations for purposes of raising the objection of the exception of no cause of action and should similarly rule that the Petition does not provide any factual basis for the Plaintiffs' legal conclusion that the Defendants violated the Open Meetings Law.

CONCLUSION

For the foregoing reasons, Defendants move this Court to grant the Peremptory Exception of No Cause of Action and dismiss Plaintiffs' lawsuit with prejudice.

Respectfully submitted,

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.

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Baton Rouge, Louisiana this 19th day of April, 2024.


M. Lenore Feeney