

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

NANDI SEKOU, MARTIAL WEBSTER,
and TERENCE JOSEPH, as members of the
VIRGIN ISLANDS BOARD OF EDUCATION,
on their own behalf and on behalf of the VIRGIN
ISLANDS BOARD OF EDUCATION,
Plaintiffs,

v.

MARY MOORHEAD, JUDY GOMEZ,
And JENNIFER JONES, ESQ.,
Defendants.

SX-17-CV-001

ACTION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY and
PERMANENT INJUNCTION,
and DECLARATORY RELIEF,
DAMAGES

MEMORANDUM OPINION AND ORDER OF DISMISSAL

By Memorandum Opinion and Order entered September 12, 2017, the Court granted Defendants' Motion for Summary Judgment as to Counts II and III of Plaintiffs' Complaint. By the same Order, Plaintiffs were granted twenty-eight days within which to respond to Defendant Moorhead's February 23, 2017 letter "motion for dismissal" as to Count I of Plaintiffs' Complaint. On November 15, 2017, Defendant Moorhead submitted a letter moving to deem her February 23, 2017 letter "motion for dismissal" conceded. As of the date of entry of this Order, Plaintiffs have failed to file any response.¹ As detailed below, because Plaintiffs' Count I has become moot, Plaintiffs' Complaint will be dismissed and this case will be closed.

Discussion²

By Order entered January 11, 2017, the Court denied Plaintiffs' Motion for Temporary Restraining Order because Plaintiffs had failed, among other things, to "describe or explain the nature of the specific harm that would be suffered by holding the meeting [to elect new Board officers] on January 21, 2017, as [] scheduled, rather than eight days earlier on January 13, 2017 as requested by Plaintiffs." Following the January 21, 2017 meeting at which the Board elected

¹ On November 16, 2017, Plaintiff Terrence Joseph submitted a letter to the Court requesting that he be "withdrawn as a plaintiff" in this matter.

² For a detailed discussion of the factual and procedural history of this matter please refer to the Court's September 12, 2017 Memorandum Opinion and Order.

new officers, Plaintiffs, by their Informative Motion to the Court, explicitly withdrew their request for injunctive relief. *See* Order entered February 3, 2017. Thus, Plaintiffs' Count I only remains potentially viable as to Plaintiffs' request for declaratory relief establishing that "Defendant Moorhead's refusal to call a timely meeting for the election of officers to the new board, following the swearing-in on January 2, 2017, despite the formal request for same... by 3 Members, the Plaintiffs herein, was in clear and direct violation of Title 3 V.I. Code § 98(a)." Complaint ¶ 51. At the hearing on July 28, 2017, when asked whether Count I was now moot, counsel for Plaintiffs responded: "I don't think so, Judge. The focus was on that the meeting, the next meeting, but it also goes on to say that we request relief that they continue -- that they abide by the by-laws and Virgin Islands law."

The general rule that courts may only rule on actual cases and controversies has been incorporated, at least in part, into Virgin Islands jurisprudence. *See Vazquez v. Vazquez*, 54 V.I. 485, 489 n.1 (V.I. 2010). However, the Supreme Court of the Virgin Islands has established that the mootness doctrine is "a non-jurisdictional claims-processing rule that has been incorporated into Virgin Islands law only as a matter of judicial policy." *Haynes v. Ottley*, 61 V.I. 547, 558 (V.I. 2014). Thus, in this jurisdiction, the "general practice of not considering a moot [issue] on the merits is not jurisdictional, but an exercise of judicial restraint." *Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 565 (V.I. 2012). A matter is deemed moot, "when there is no issue between parties that can be resolved by the court." *Chavayez v. Buhler*, 2009 V.I. Supreme LEXIS 26, * 38 (V.I. 2009) (Swan, J., concurring) (unpublished). In determining whether a matter is moot, the Court must evaluate, "whether changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief." *Id.* at *39 (citing *Jersey Cent. Power & Light Co. v. N.J.*, 772 F.2d 35, 39 (3d Cir. 1985)).

Here, the gravamen of Plaintiffs' claim in Count I is that Defendant Moorhead failed to call a meeting of the Board to elect new officers in a sufficiently timely fashion as requested by the three Plaintiff Board members. By letter dated December 16, 2016, Plaintiffs requested that Moorhead call a special meeting of the Board on January 2, 2017, immediately following the swearing-in of the new Board members. Complaint ¶ 51, Exhibit 9. Although Moorhead allegedly disregarded Plaintiffs' letter, a meeting was nonetheless held on January 21, 2017 and new officers were elected. *See* Plaintiffs' Informative Motion, filed February 2, 2017. Recognizing that the issue of the timeliness of the meeting had become moot, Plaintiffs withdrew their request for injunctive relief.

Plaintiffs contend that Count I is not moot because their prayer for declaratory judgment remains. However, in the absence of any accompanying injunctive relief, it appears that such declaratory judgment would in no way alter the respective positions, rights, or duties of the parties in this case. In this regard, any declaratory judgment entered on Count I would be purely advisory in nature, as the election of new Board officers, whether improperly delayed or not, has forestalled any occasion for *meaningful* relief.³ Even if the Court were to broadly declare, as Plaintiffs request,

³ The Supreme Court has suggested, in *dicta*, that the Superior Court is explicitly permitted to issue advisory opinions pursuant to 5 V.I.C. § 423. While § 423 appears to permit the Court to issue something akin to an advisory opinion, in that no judgment will ultimately enter, in order for parties to invoke § 423 there must be some "question in controversy" between them, and the parties must verify by oath that "the controversy is real, and the proceeding is taken in good faith to determine the rights of the parties." In any event, to the extent § 423 does permit advisory opinions, it does so only upon specific request and application of both parties, which is absent here. Alternatively, the issuance of declaratory judgments without further relief is explicitly authorized by 5 V.I.C. § 1261, modeled on the Uniform Declaratory Judgment Act. Nonetheless, courts in other states interpreting similar provisions still apply traditional doctrines of justiciability, declining to enter such judgments where plaintiffs lack standing or where the issues presented have become moot. *See, e.g., Dept. of Cmty Affairs v. Mass. State Coll. Bldg. Authority*, 378 Mass. 418, 422 (1973) (interpreting Massachusetts declaratory judgment statute to require "a real dispute caused by the assertion by one party of a legal relation, status or right in which he has a definite interest, and the denial of such assertion by another party also having a definite interest in the subject matter, where the circumstances attending the dispute plainly indicate that unless the matter is adjusted such antagonistic claims will almost immediately and inevitably lead to litigation"); *see also Oregon Cities v. State of Oregon*, 334 Ore. 645, 658 (2002) (interpreting Oregon declaratory judgment statute to require "some injury or other impact upon a legally recognized interest beyond an abstract interest in the correct application or validity of a law").

that 3 V.I.C. § 98 requires the chairperson of the Board, at the request of three Board members, to call a special meeting at the precise date and time requested,⁴ such a declaration would in no way impact the ultimate resolution of this matter. Accordingly, Plaintiffs' Count I will be dismissed as moot.

Therefore, on the basis of the foregoing, it is hereby

ORDERED that Defendant Moorhead's February 23, 2017 letter "motion for dismissal" is GRANTED. It is further

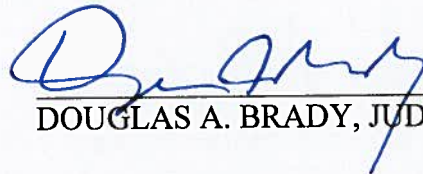
ORDERED that Count I of Plaintiffs' Complaint is DISMISSED, as moot. It is further

ORDERED that Defendant Moorhead's November 15, 2017 letter, construed as a motion to deem her motion for dismissal conceded, is DENIED, as moot. It is further

ORDERED that Plaintiff Terrence Joseph's November 16, 2017 letter, construed as a motion to withdraw as a Plaintiff, is DENIED, as moot. It is further

ORDERED that this matter is CLOSED.

DATED: December 5, 2017.


DOUGLAS A. BRADY, JUDGE

ATTEST: ESTRELLA GEORGE
Clerk of the Court

By: 
Court Clerk Supervisor
12/6/17

⁴ 3 V.I.C. § 98(a) clearly requires that the chairperson "shall call a special meeting upon the written request of three members." However, it does not necessarily follow that failure to convene that special meeting at the precise date and time requested is a "clear and direct violation" of the statute as Plaintiffs contend.