

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

**JOHN CANEGATA, IN HIS CAPACITY AS
STATE CHAIRMAN OF THE REPUBLICAN
PARTY OF THE UNITED STATES VIRGIN
ISLANDS; AND ROBERT MAX SCHANFARBER,
IN HIS CAPACITY AS SECRETARY OF THE
REPUBLICAN PARTY OF THE UNITED STATES
VIRGIN ISLANDS, BOTH ACTING ON BEHALF
OF THE REPUBLICAN PARTY OF THE UNITED
STATES VIRGIN ISLANDS,**

PLAINTIFFS,

v.

**HERBERT SCHOENBOHM; HOLLAND
REDFIELD; JAMES OLIVER; FRED VIALET,
JR.; LEIGH F. GOLDMAN; AND WARREN B.
COLE,**

DEFENDANTS.

SX-16-CV-324

**ACTION FOR INJUNCTIVE RELIEF
TEMPORARY RESTRAINING
ORDER
PRELIMINARY INJUNCTION
PERMANENT INJUNCTION**

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Warren B. Cole's motion to dismiss, filed on August 3, 2016 (hereinafter, "Motion"). This Motion was joined by Defendant Holland Redfield, Defendant Fred Vialet, Jr., and Defendant Leigh F. Goldman. Plaintiff John Canegata and Plaintiff Robert Max Schanfarber filed a timely opposition (hereinafter, "Opposition") and Defendant Warren B. Cole filed a timely reply thereafter (hereinafter, "Reply").

BACKGROUND¹

On May 18, 2016, Plaintiffs filed an original complaint against Defendants (hereinafter, "Original Complaint") and a motion requesting the Court to issue a temporary restraining order to enjoin Defendants from the unauthorized use of: (1) any symbol, emblem and insignia of the

¹ This memorandum opinion recites the factual background only to the extent necessary to explain the present issues and the bases of the Court's decision.

Republican National Committee, namely the Elephant; and (2) the “Republican Party of the U.S. Virgin Islands” name. *Canegata v. Schoenbaum*, SX-16-CV-324, 2016 V.I. LEXIS 74, 4 (Super. Ct. June 20, 2016) (unpublished). On May 27, 2016, the Court entered a memorandum opinion and an accompany order granting Plaintiffs’ motion for a temporary restraining order and scheduled a hearing on the issuance of a preliminary injunction on June 3, 2016. *Id.*

At the June 3, 2016 preliminary injunction hearing, Plaintiffs’ counsel, Attorney Mark Eckard and Defendant Warren B. Cole’s counsel, Attorney Thomas A. Alkon, represented to the Court that the parties have agreed to convert the temporary restraining order into a preliminary injunction and to continue the hearing to a date after the Republican Party Convention.² *Id.*, 2016 V.I. LEXIS 74 at 6. Attorney Mark Eckard explained on the record that,

The purpose of the agreement is that I think both parties recognize that to the extent there is an underlying dispute involving internal operating rules of the party, that the [Republican National Committee] would be the place for the Defendants to bring that dispute, which I assume – I think it’s safe that they’re going to. But I think that would be the place for the Defendants to bring that dispute. Preliminary Injunction Hr’g Tr., p. 5, June 3, 2016. *Id.*

Thereafter, upon verifying that Attorney Thomas A. Alkon had authority to enter into such an agreement with Plaintiffs on behalf of all Defendants, the Court granted the parties’ stipulation to convert the temporary restraining order into a preliminary injunction until August 5, 2016 and scheduled a hearing to take place in this matter on August 5, 2016. (Order, dated June 25, 2016 and entered on June 27, 2016)

Meanwhile, on June 22, 2016, Defendant Warren B. Cole filed a contestant’s position statement with the Republican National Committee (hereinafter, “RNC”) contesting the validity of Plaintiff John Canegata as the elected state chairman of the Republican Party of the U.S. Virgin Islands. (Opp., Exhibit B) In his contest, Defendant Warren B. Cole asserted, *inter alia*, that he is

² The Republican Party Convention was scheduled to be held in Cleveland, Ohio, from July 17, 2016 through July 21, 2016.

the proper state chairman delegate to the Republican National Convention. (Id.) On June 27, 2016, Plaintiff John Canegata filed a response to Defendant Warren B. Cole's contest. (Opp., Exhibit C) On June 30, 2016, the RNC Committee on Contests issued its Report and Recommendation for Resolution in re: Contest of Chairman of the Republican Party of the U.S. Virgin Islands (hereinafter, "June 30, 2016 Report"). (Opp., Exhibit D) According to the June 30, 2016 Report, the RNC Committee on Contests indicated that it "has no jurisdiction over Contestant [Cole's] challenge because *The Rules of the Republican Party*, as adopted by the 2012 Republican National Convention on August 28, 2012, and subsequently amended by the RNC ("*The Rules*"), do not recognize it as a 'contest' subject to [RNC Committee on Contests'] review" and as a result, RNC Committee on Contests did not take a position on the identity of the validly elected chairman of the Republican Party of the U.S. Virgin Islands. (Id.) On July 5, 2016, Defendant Warren B. Cole filed an appeal. (Opp., Exhibit E) In a report to the RNC in re: Contest of Chairman of the Republican Party of the U.S. Virgin Islands, dated July 11, 2016, the RNC Committee on Contests readopted and reaffirmed its June 30, 2016 Report. (Opp., Exhibit F) Subsequently, on July 13, 2016, the RNC Committee on Contests filed an amended report to the RNC in re: Contest of Chairman of the Republican Party of the U.S. Virgin Islands (hereinafter, "July 13, 2016 Amended Report"). (Opp., Exhibit G)

On August 3, 2016, two days before the scheduled hearing on August 5, 2016, Defendant Warren D. Cole filed this instant Motion.³ This Motion was subsequently joined by Defendant Holland Redfield, Defendant Fred Vialet, Jr., and Defendant Leigh F. Goldman.

At the August 5, 2016 hearing, due to Plaintiffs' failure to appear, the Court found that Plaintiffs failed to prosecute, granted Defendant Warren B. Cole's Motion, and dismissed the case. Thereafter, upon an examination of the six *Poulis/Halliday* factors, the Court issued an order, dated

³ As noted in a prior order, in light of Defendant Warren D. Cole filing this instant Motion, the Court will treat his previous motion to dismiss, filed on May 25, 2016, as withdrawn.

August 23, 2016, reversing its decision and vacating its order granting Defendant Warren B. Cole's Motion and dismissing the case for failure to prosecute.

STANDARD OF REVIEW

The Supreme Court of the Virgin Islands (hereinafter, "Supreme Court") 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 Court's 'general practice of not considering a moot [issue] on the merits is not jurisdictional but an exercise of judicial restraint.'" *Sekou v. Moorhead*, SX-16-CV-071, 2016 V.I. LEXIS 73,*5-6 (Super. Ct. June 10, 2016) (unpublished) (*quoting 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 the parties that can be resolved by the Court." *Chavayez v. Buhler*, 2009 V.I. Supreme LEXIS 26, *37 (V.I. 2009) (Swan, J. Concurring) (unpublished). When a complaint contains several prayers for relief, even if one of the requests subsequently becomes moot, "a court must still consider the viability of the remaining requests, even in the event that one of these requests subsequently becomes moot." *Id.*, 2009 V.I. Supreme LEXIS 26 at *8 (internal quotations and citation omitted).

DISCUSSION

In its Motion, Defendant Warren B. Cole argued that this matter should be dismissed as moot because "Plaintiffs initiated this action to bar the Defendants from the use of the Republican Party logo and official name during a time when controversy existed over whom the authorized voting delegates to the Republican National Convention of 2016 would be and how party officials would be elected in the current election cycle" and now that the territorial convention of the Republican Party of the U.S. Virgin Islands (hereinafter, "Republican Territorial Convention) and the Republican National Convention is over, the "concerns about confusion at a critical time over which of the

parties legitimately represents the interests of the local Republican Party are no longer present.”

(Motion, p. 1, 4) Moreover, Defendant Warren B. Cole also argued that this matter should be dismissed as moot because the RNC has “issued an opinion resolving the dispute between the parties.”⁴ (Id., at p. 1)

In their Opposition, Plaintiffs countered that this matter is not moot because: (1) the Original Complaint contemplated situations beyond the Republican Territorial Convention;⁵ and (2) the underlying issues are not resolved by the July 13, 2016 Amended Report.⁶ (Opp., p. 9-11) Thus, Plaintiffs concluded that this matter should not be dismissed as moot and requested the Court to deny Defendant Warren B. Cole’s Motion.⁷

In his Reply, Defendant Warren B. Cole reiterated his argument that this matter is moot. Defendant Warren B. Cole claimed that “[t]here is nothing more for the Court to do” and therefore, requested the Court to dismiss this matter.⁸ (Reply, p. 3)

⁴ Defendant Warren B. Cole attached as exhibit 1 to his Motion, a copy of RNC Committee on Contests Report and Recommendation for Resolution in re: Contest of U.S. Virgin Islands At-Large Delegates & Alternate Delegates, dated June 30, 2016. This report resolved the narrow issue with regard to the contest of U.S. Virgin Islands At-Large Delegates and Alternate Delegates; this report did not discuss the dispute between the Plaintiff John Canegata and Defendant Warren B. Cole in re Contest of Chairman of the Republican Party of the U.S. Virgin Islands. Plaintiffs attached a copy of the correct report—the July 13, 2016 Amended Report—as exhibit G to their Opposition.

⁵ “Plaintiff plainly requested a permanent injunction in the [Original] Complaint. The [Republican Territorial] Convention was but one situation “among others” that implicate Plaintiff’s need for the relief sought in the [Original] Complaint.” (Opp., p. 9)

⁶ “This matter is about Defendant Cole’s and the other Defendants’ usurpation of the name, emblem, symbol and/or logo of Plaintiff...the issues underlying this Action are very much alive and giving rise to relief.” (Id., at p. 10)

⁷ In their Opposition, Plaintiffs also argued that the Court should issue a permanent injunction in this matter. If Plaintiffs wish to move for permanent injunctive relief, then Plaintiffs should file its request in a separate motion, not within its Opposition to Defendant Warren B. Cole’s Motion. Accordingly, the Court will not address Plaintiffs’ request for permanent injunctive relief.

⁸ In his Reply, Defendant Warren B. Cole also argued that the “failure of Plaintiffs to join the RNC as a necessary party constitutes further grounds for dismissal.” (Reply, p. 9) This argument is raised for the first time in Defendant Warren B. Cole’s Reply. It is unfair for Plaintiffs to be ambushed by an entirely new argument for dismissal in the Reply without the opportunity to respond. If Defendant Warren B. Cole wishes to move for dismissal for failure to join a necessary party, then Defendant Warren B. Cole should file a separate motion.

Furthermore, aside from his self-serving, conclusory sentences, Defendant Warren B. Cole failed to cite to any authority to support his assertion that this matter should be dismissed for failure to join RNC as a necessary party. In *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, n. 13 (V.I. 2016), the Supreme Court clearly stated that “Members of the Virgin Islands Bar... must be cognizant of their responsibility to serve as advocates for their clients, which includes making all necessary legal arguments...” Moreover, albeit it is in the context of an appeal, the Supreme Court has long established that in order for a motion to be properly before the court, parties must support their arguments by citing the proper legal authority, statute or rule. See *Bernhardt v. Bernhardt*, 51 V.I. 341, 345-46 (V.I. 2009); see also,

The Court must note at the outset that the Original Complaint contained several prayers for relief, including but not limited to: temporary injunctive relief; preliminary injunctive relief; permanently injunctive relief; and attorneys' fees and costs incurred in connection with this Action.⁹ While Defendant Warren B. Cole's Motion requested the Court to dismiss the Original Complaint in its entirety, Defendant Warren B. Cole's argument only addressed Plaintiffs' request for injunctive relief. Thus, even assuming *arguendo* that this matter is mooted with regard to Plaintiffs' request for injunctive relief, it is still improper for the Court to dismiss the entire matter because the Court must still consider the viability of the remaining requests. See e.g., *Chavayez*, 2009 V.I. Supreme LEXIS 26 at *8 (The Supreme Court found that the trial court erred in dismissing Chavayez's entire complaint on mootness grounds since Chavayez's complaint expressly contained additional prayers for damages and costs and attorney's fees). With that preface, the Court will now address whether Plaintiffs' request for injunctive relief is mooted as claimed by Defendant Warren B. Cole.

1. The Occurrence of the Republican Territorial Convention and the Republican National Convention

The Court will first consider whether Plaintiffs' request for injunctive relief has become moot due to the fact that the Republican Territorial Convention and the Republican National Convention has occurred. Plaintiffs contended that their request has not become moot, for while the Original Complaint focused on the Republican Territorial Convention, the Republican Territorial Convention

Davis v. Varlack Ventures, Inc., 59 V.I. 229, 238-239 (V.I. 2013) (The rules of this Court require an appellant's brief to "contain the contentions of the appellant with respect to each of the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on.") (emphasis in original); *Yusuf v. Hamed*, 59 V.I. 841, 851 n. 5 (V.I. 2013) ("To preserve an objection on appeal, a party must object on the specific grounds raised on appeal, and a general objection or an objection on other grounds will not suffice.") (internal quotations and citations omitted)

Accordingly, the Court will not address Defendant Warren B. Cole's request for dismissal for failure to join the RNC as a necessary party.

⁹ The Original Complaint provided, in relevant part:

WHEREFORE, Plaintiffs respectfully request that the Court (i) enter orders temporarily, preliminarily and permanently restraining Defendants from using the name, symbol, emblem and/or insignia of the Republican Party; (ii) grant to Plaintiffs their attorneys' fees and costs incurred in connection with this Action; and (iii) grant to Plaintiffs such other and further relief as is just and proper.

“was but one situation ‘among others’ that implicate Plaintiff’s [sic] need for the relief sought in the [Original] Complaint.” (Opp., p. 9) The Court agrees. The Original Complaint stated Plaintiffs’ request for the Court to “enter orders temporarily, preliminarily and permanently restraining Defendants from using the name, symbol, emblem and/or insignia of the Republican Party.” (Original Complaint, p. 10). There was no mention that the injunctive relief would end with the occurrence of the Republican Territorial Convention. When reviewing the Original Complaint and Plaintiffs’ motion requesting injunctive relief to enjoin Defendants’ from unauthorized use of the “Republican Party of the U.S. Virgin Islands” name and the symbol, emblem, or insignia of the RNC, the fact that the Republican Territorial Convention was rapidly approaching was a factor in the Court’s determination that Plaintiffs faced immediate, irreparable harm. The Court did not, and does not interpret Plaintiffs’ request for injunctive relief to be limited to the occurrence of the Republican Territorial Convention.

Similarly, the Court does not interpret Plaintiffs’ request for injunctive relief to be limited to the occurrence of the Republican National Convention. At the June 3, 2016 preliminary injunction hearing, per the parties’ representation of their agreement to convert the temporary restraining order into a preliminary injunction, the Court granted the parties’ request to continue the hearing until after the Republican National Convention so they have the opportunity to bring their dispute before the RNC at the Republican National Convention. There is nothing on the record that indicates this matter would be rendered moot simply by the occurrence of the Republican National Convention. In fact, the hearing was continued until August 5, 2016 so the parties can report back to the Court whether the dispute was resolved at the Republican National Convention and the Court can determine how to proceed in this matter.

The Court disagrees with Defendant Warren B. Cole’s assertion that having two groups—Plaintiffs and Defendants—that both claim to act on behalf of the Republican Party of the U.S.

Virgin Islands no longer presents a concern now that the Republican Territorial Convention and the Republican National Convention has occurred. Plaintiffs continue to object to Defendants' unauthorized use of the "Republican Party of the U.S. Virgin Islands" name and the symbol, emblem, or insignia of the RNC. If Plaintiffs are still acting on behalf of the Republican Party of the U.S. Virgin Islands as claimed by Plaintiff John Canegata,¹⁰ then they may lawfully prevent the appropriation of the "Republican Party of the U.S. Virgin Islands" name by organizations not functioning under the aegis of the Republican Party of the U.S. Virgin Islands and Title 18 V.I.C. § 301(c)¹¹ prevents the unauthorized use of the symbol, emblem, or insignia of said political party.

Thus, there are issues between the parties that may be resolved by the Court. Accordingly, the occurrence of the Republican Territorial Convention and the Republican National Convention did not render Plaintiffs' request for injunctive relief moot.

2. The July 13, 2016 Amended Report

The Court will now consider whether Plaintiffs' request for injunctive relief has become moot due to the fact that the RNC Committee of Contests issued the July 13, 2016 Amended Report. Plaintiffs contended that their request has not become moot because the underlying issues are not resolved by the July 13, 2016 Amended Report.

¹⁰ According to the Opposition, Plaintiff John Canegata called a new territory-wide caucus/convention in compliance with the July 13, 2016 Amended Report and the results showed that, *inter alia*, Plaintiff John Canegata was re-elected as the territorial committee chairman of the Republican Party of the U.S. Virgin Islands (hereinafter, "Territorial Committee Chairman"). (Opp., Exhibit H) Plaintiffs asserted that Defendants continue to be the dissident group opposing Plaintiff John Canegata's authority as the Territorial Committee Chairman. (Opp., p. 7-8) ("Defendants continue to claim that Plaintiff is not properly constituted because it is functioning subsequent to a flawed convention process...")

¹¹ Title 18 V.I.C. § 301(c) provides:

Whenever a political party in the Virgin Islands affiliates with a national political party, committee, convention or organization, regardless of when such affiliation took place, no association, group, club, organization or instrumentality shall use the symbol, emblem, or insignia, of the national political party, convention, committee or organization which has affiliated with a Virgin Islands political party, without the express consent in writing from the chairman and secretary of the Virgin Islands political party filed with the Supervisor of Elections. A petition for an injunction to restrain such association, club, group or instrumentality from using such symbol, emblem, or insignia may be filed in the District Court by the officers of said affiliated political party and/or the Supervisor of Elections.

Here, the parties brought their dispute before the RNC and the RNC Committee of Contests issued the July 13, 2016 Amended Report memorializing the settlement agreement the parties negotiated and entered into. As stated in the July 13, 2016 Amended Report:

Following the [RNC Committee on Contests'] issuance of its [July 11, 2016 Report], the parties entered into a negotiated settlement on July 13.

...

Under the settlement, Chairman John Canegata must call a new territory-wide caucus or convention to occur within 90 days of the date of this [July 13, 2016] Amended Report of all individuals who are registered to vote in the U.S. Virgin Islands and are registered as Republicans (the "electors") to elect a Territorial Committee Chairman, National Committeeman, and National Committeewoman, as well as members of the Territorial Committee. Canegata must give a minimum of 10 day' notice of the date, time, and place for the caucus or convention, and it is understood that the amendments to the party's bylaws implemented on or after May 6, 2016, giving the Chairman extraordinary consent rights as to qualified voters, shall not be given effect. The caucus or convention will adopt the rules that will govern the caucus or convention, and the territorial committee that is elected at the caucus or convention will adopt new territorial bylaws. No proxies shall be allowed for any purpose at the caucus or convention. Robert's Rules of Order, most recent addition, shall govern the caucus or convention.

It is further agreed that the national committeeman and national committeewoman will be certified by the RNC *before* the election of a new RNC Chairman. Chairman Canegata will continue to serve until his successor is elected and qualified and, for purposes of the 2016 Republican National Convention, will be recognized as the chairman of the U.S. Virgin Islands delegation and the present Convention Committee members will continue to serve without a vote. The terms of the existing national committeeman and national committeewoman will expire upon the close of the 2016 Republican National Convention. Chairman Canegata will not present any national committeeman and national committeewoman nominee at the RNC organizational meeting in July 2016 for ratification.

RNC political will monitor the performance of and compliance with this agreement. (Opp., Exhibit G) (emphasis in original)

Plaintiffs complained that the underlying issues are not resolved by the July 13, 2016 Amended Report because "Defendants breached the [July 13, 2016 Amended Report] by failing to participate in – not to mention publicly advocating for a boycott of – the Caucus" and "Defendants continue to claim that Plaintiff is not properly constituted because it is functioning subsequent to a flawed convention process." (Opp., p. 7-8) The Court believes these complaints over intra-party issues are better addressed by the RNC Committee of Contests, which stated in the July 13, 2016

Amended Report that they will monitor the performance of and compliance with the July 13, 2016 Amended Report. (Opp., Exhibit G) Plaintiffs also complained that “Defendants, as led by Defendant Schoenbohm, continue to operate a website that blatantly violated the terms of the Preliminary Injunction and, without regard to the present status of the Preliminary Injunction, is, in and of itself, cause for a permanent injunction under [Title] 18 V.I.C. § 301(c).” (Id., at p. 8) However, the preliminary injunction expired on August 5, 2016¹² and therefore, there is no preliminary injunction in place for Defendants to violate.

The parties need to understand that this matter before the Court does not involve the Court adjudicating intra-party issues, such as which group ultimately represents the Republican Party of the U.S. Virgin Islands and which meetings, actions, and/or votes are valid operations of the Republican Party of the U.S. Virgin Islands. Rather, this matter involves the Court adjudicating whether Plaintiffs—at the time the Original Complaint was filed, the State Chairman and Secretary of the Republican Party of the U.S. Virgin Islands, acting on behalf of the Republican Party of the U.S. Virgin Islands—are entitled to injunctive relief against Defendants—the dissident group engaged in rivalry for control. As noted above, if Plaintiffs are still acting on behalf of the Republican Party of the U.S. Virgin Islands as claimed by Plaintiff John Canegata,¹³ then they may lawfully prevent the appropriation of the “Republican Party of the U.S. Virgin Islands” name by organizations not functioning under the aegis of the Republican Party of the U.S. Virgin Islands and Title 18 V.I.C. § 301(c)¹⁴ prevents the unauthorized use of the symbol, emblem, or insignia of said political party.

Thus, there are issues between the parties that may be resolved by the Court. Accordingly, Plaintiffs’ request for injunctive relief is not mooted by the July 13, 2016 Amended Report.

¹² In an order dated June 25, 2016 in this matter, the Court ordered that “the temporary restraining order is converted into a preliminary injunction until August 5, 2016.”

¹³ *Supra*, fn. 9.

¹⁴ *Supra*, fn. 10.

CONCLUSION

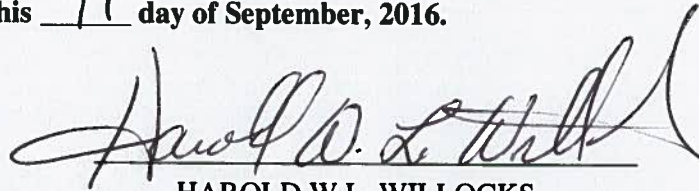
Based on the foregoing, the Court will deny Defendant Warren B. Cole's motion to dismiss.

An Order consistent with this Memorandum Opinion will follow.

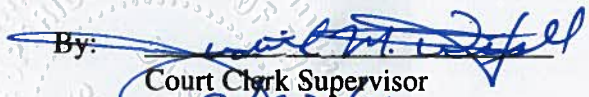
DONE and so ORDERED this 19th day of September, 2016.

ATTEST:

Estrella H. George
Acting Clerk of the Court



HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

By: 

Court Clerk Supervisor

Dated: 9/20/16