

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - September 17, 2020

EVENT DATE: 09/18/2020 EVENT TIME: 08:30:00 AM DEPT.: C-65
JUDICIAL OFFICER: Ronald F. Frazier

CASE NO.: 37-2019-00043494-CU-JR-CTL

CASE TITLE: WAHLSTROM VS GLORIA [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Judicial Review - Other

EVENT TYPE: Demurrer / Motion to Strike
CAUSAL DOCUMENT/DATE FILED:

Defendant Todd Gloria's Demurrer to Amended Complaint is SUSTAINED with leave to amend. (ROA 42.)

Plaintiff commenced this action against Gloria and Defendant San Diego County Democratic Party on August 19, 2019. (ROA 1.) Plaintiff then filed an Amended Verified Complaint on February 28, 2020. (ROA 38.) Gloria filed this demurrer on May 28, 2020, shortly after the court re-opened following the closure due to the COVID-19 pandemic.

Gloria asserts the court lacks subject matter jurisdiction. (Code Civ. Proc. § 430.10(a).) Under the Political Reform Act, "[n]o civil action may be filed under Section 91004, 91005, or 91005.5 with regard to any person for any violations of this title after the commission has issued an order pursuant to Section 83116 against that person for the same violation." (Govt. Code § 91008.5.) Here, the Fair Political Practices Commission ("FPPC") issued an order signed on November 21, 2019 in which Gloria stipulated to violation of Government Code section 85200, for which the FPPC imposed a \$200 penalty. The FPPC's order was issued several months after this action commenced. Thus, this action was not "filed... after" the FPPC issued its order. (Govt. Code § 91008.5.) Nonetheless, the court construes the statute as having preclusive effect here. To the extent Plaintiff's action is brought under Section 91004, 91005, or 91005.5, there is no further remedy for the court to provide for a violation of Section 85200, as the FPPC has already imposed a monetary penalty for this violation.

The court is not persuaded by Plaintiff's argument the FPPC's order covers only the "timeliness" and not the "truthfulness" of Gloria's August 13, 2019 declaration of intent to run for re-election as representative of Assembly District 78. (Amd. Compl. ¶ 10.) On demurrer, the court is required to accept the truth of the allegations in Plaintiff's Amended Complaint. Even assuming it is true that Gloria filed his declaration under penalty of perjury while at the same time never intending to run for the Assembly (Amd. Compl. ¶¶ 10, 14, 17), it is not clear how this could amount to anything other than a violation of Section 85200. Plaintiff does not contend in his opposition that such conduct would violate any other statutory provision. Accordingly, the FPPC's order against Gloria for violation of Section 85200 precludes an action by Plaintiff to the extent it is brought under Section 91004, 91005, or 91005.5.

Plaintiff argues his action is also brought under Section 91003, and his Amended Complaint does plead for injunctive relief. Specifically, Plaintiff requests that the court enjoin Defendants from "using any money from Gloria's Assembly 2020 committee, directly or indirectly, to support his campaign for the office of Mayor of the City of San Diego in 2020." (Amd. Compl. at 8:14-16.) Further, Plaintiff argues the FPPC's order does not address his allegations of illegally raising and transferring campaign funds

between the campaign committees. The court agrees the FPPC's order only covers violation of Section 85200. Accordingly, the court finds Plaintiff's action is not entirely precluded by Section 91008.5.

Gloria asserts Plaintiff lacks capacity to sue. (Code Civ. Proc. § 430.10(b).) However, it appears the issue is lack of *standing* rather than lack of *capacity*. Accordingly, the court treats this argument as one for failure to state facts sufficient to state a cause of action. (Code Civ. Proc. § 430.10(e).)

As to standing, Gloria contends Plaintiff did not comply with the required 120-day waiting period after requesting that a civil prosecutor commence an action before filing this action. (Govt. Code § 91007(a).) The parties refer to Exhibit J, which is purportedly attached to the Amended Complaint. (Amd. Compl. ¶ 38.) However, the filed copy does not contain this exhibit. (ROA 38.) Accordingly, the court is unable to determine when Plaintiff first made the written request. The parties do not appear to dispute that the written request was made August 14, 2019, just days before Plaintiff filed his initial Complaint in this action. Even if the court had allegations or judicially noticeable facts before it to the effect that the written request was in fact made on August 14, 2019, it would not entirely bar Plaintiff's claim. The 120-day waiting period only applies to actions brought under to Sections 91004 and 91005. (Govt. Code § 91007(a).) Here, Plaintiff also pleads for injunctive relief under Section 91003. Further, a general demurrer does not lie as to only part of a claim. (PH II, Inc. v. Superior Court (1995) 33 Cal.App.4th 1680, 1682-83.)

Lastly, Gloria asserts Plaintiff's sole cause of action for Illegal Campaign Financing fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10(e).)

As to Plaintiff's allegation that Gloria's campaign funds became "surplus," this portion of Plaintiff's claim appears to be legally invalid. Surplus campaign funds after a politician leaves office (or loses the race) can only be used for limited purposes. (Govt. Code § 85919(b).) However, they only become surplus "[u]pon the 90th day *after* leaving an elective office, or the 90th day following the end of the postelection reporting period following the *defeat* of a candidate for elective office, whichever occurs last...." (Govt. Code § 85919(a), emphasis added.) Here, Gloria won office in 2018 and has not left office. (Amd. Compl. ¶ 7.)

As to Plaintiff's allegations that Gloria used his Assembly 2020 funds for illegal political purposes, Gloria contends the allegations are vague, wrong, and were explicitly considered and rejected by the FPPC. As discussed above, the FPPC's order only covers a violation of Section 85200. Whether the allegations may ultimately be proven false is not for the court to determine at this stage. However, the court agrees Plaintiff's allegations are vague and do not clearly state a cause of action. Indeed, although the Amended Complaint recites extensively to various statutes (Amd. Compl. ¶¶ 21-32), it does not explicitly allege violation of any of them. Accordingly, the demurrer is sustained on these grounds with leave to amend.

Plaintiff is to file a Second Amended Complaint on or before October 9, 2020.

The court grants Gloria's requests for judicial notice as to Exhibits B, C, D, and E only. (Evid. Code § 452(c).) As to Exhibit A, the request is denied on the grounds Gloria has not sufficiently demonstrated this is a record of which the court may take judicial notice. As to Exhibit F, the request is denied on the grounds it was not relevant to the court's determination of the demurrer.

The court denies Plaintiff's request for judicial notice of his recently filed writ petition. Although the writ petition is a proper subject of judicial notice, it was not relevant to the court's determination of the demurrer.

The parties are to ensure future requests for judicial notice comply with California Rules Court, rules 3.1113(l) and 3.1306. Requests for judicial notice are not to be accompanied by memoranda of points and authorities. All legal argument should be contained within one memorandum of points and authorities in support, in opposition, or in reply of the motion, and additional memoranda may not be

used to circumvent the court's rules regarding oversized memoranda. (Cal. R. Court, rule 3.1113(d), (e), and (g).)

The court observes Defendant San Diego County Democratic Party filed a "joinder" in Defendant Gloria's demurrer. (ROA 45.) The joinder is improper and was not considered. Demurrers do not lend themselves well to "joinders," as the allegations against each defendant must be separately scrutinized. In addition to the arguments specific to Gloria, SDCDP provided its own separate memorandum of points and authorities asserting arguments specific to itself, and filed a reply. SDCDP should have obtained its own hearing date and filed its own moving papers. As a practical matter, the court contemplates that one set of moving papers, one opposition, and one reply will be filed when a hearing is set; the court does not have capacity to consider numerous additional memoranda.

Although SDCDP's papers were not considered, Plaintiff's counsel is encouraged to meet and confer with all Defendants' counsel regarding any alleged deficiencies in his pleadings before filing a Second Amended Complaint. Defendants' counsel are also encouraged to coordinate with each other before scheduling hearings so that similar motions may be heard together, when possible.

The court observes Plaintiff has filed a Notice of Related Case identifying Case No. 37-2020-00030654. (ROA 46.) No party has filed a response to the notice. (Cal. R. Court, rule 3.300(g).) Accordingly, the court deems the case related on the grounds it arises from the same events and is likely to require duplication if heard by a different judge. (Cal. R. Court, rule 3.300(h)(1).) Accordingly, Case No. 37-2020-00030654 is ordered reassigned to Department 65. Any future hearings currently set in Department 67 in Case No. 37-2020-00030654 are vacated and are to be re-set in Department 65.