

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 03/29/2013

TIME: 02:00:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown, K. Pratchen

REPORTER/ERM: E. Varela CSR# 4977

BAILIFF/COURT ATTENDANT: A. Muir-Harrison

CASE NO: **34-2012-00130439-CU-MC-GDS** CASE INIT.DATE: 10/01/2012

CASE TITLE: **The National Grange of the Order of Patrons of Husbandry vs. The California State Grange**

CASE CATEGORY: Civil - Unlimited

EVENT ID/DOCUMENT ID: ,9729067

EVENT TYPE: Motion for Preliminary Injunction

MOVING PARTY: Robert McFarland

CAUSAL DOCUMENT/DATE FILED: Motion - Other on Return on Order to Show Cause R: Preliminary Injunction, 03/13/2013

APPEARANCES

Carl Calnero, specially appearing for counsel Martin Jensen, present for Plaintiff(s).

William A Lapcevic, counsel, present for Defendant(s).

Daniel Stouder, counsel, present for all Defendants except R. McFarland.

Nature of Proceeding: Motion for Preliminary Injunction (Joinder by The Ca State Grange)

TENTATIVE RULING

Defendant/Cross-Complainant Robert McFarland's Motion for Preliminary Injunction is ruled upon as follows.

The Joinder of Defendant/Cross-Complainant The California State Grange is dropped for insufficient notice. The notice of joinder was served on March 21, 2013 and gives insufficient notice of a hearing scheduled for March 29, 2013. (CCP §1005, Local Rule 3.19.)

McFarland's request for judicial notice is granted. (Evid. Code §452(d).)

This action arises out of a dispute between the national and state levels of the Grange. The National Grange of the Order of Patrons of Husbandry ("National Grange") and the California State Grange are nonprofit corporations whose purpose appears to be the promotion and support of agricultural communities.

In its Complaint, the National Grange alleges that the California State Grange is a subordinate division of the National Grange, and is subject to a charter issued by the National Grange. (See *generally* Complaint ¶¶2-11.)

The National Grange alleges that Defendant/Cross-Complainant Robert McFarland was elected as the Master of the California State Grange, but was subsequently suspended from his duties by order of the National Grange for 60 days in June and July of 2012. (Complaint ¶13.)

The National Grange alleges that on August 6, 2012, McFarland was again suspended by the Master of the National Grange, "pending a new set of duly filed charges to be adjudicated in The National Grange

trial process." (Complaint ¶13.) The National Grange alleges that McFarland refused to accept the suspension, and continued to act as the Master of California State Grange. (Complaint ¶15.) The National Grange further alleges that a majority of the members of the California State Grange Executive Committee also refused to cooperate in enforcing McFarland's suspension. (Complaint ¶16.) The National Grange alleges that on September 17, 2012, Edward L. Luttrell, Master of The National Grange, formally suspended the charter of the California State Grange for its failure to abide by "the laws and usages of the Order of The National Grange." (Complaint ¶20.) The National Grange alleges that McFarland and the members of the California State Grange Executive Committee also refused to comply with the suspension of the charter and "have thus rejected the authority of The National Grange and the State Grange Bylaws regarding the suspension of McFarland pending adjudication of the charges filed against him." (Complaint ¶23.) The National Grange subsequently filed its Complaint in this action, by which it seeks declaratory and injunctive relief establishing its authority to suspend the charter of the California State Grange and to suspend McFarland from his duties, and imposing the suspensions by injunction.

On November 15, 2012, McFarland filed a Cross-Complaint against the National Grange and various officials thereof asserting causes of action for Defamation, Public Disclosure of Private Facts, Intrusion, Intentional Interference with Contractual Relations, Intentional Interference with Prospective Business Relations, and Infliction of Emotional Distress. In the Cross-Complaint, McFarland alleges that the charges against him by the National Grange are false and defamatory, and that the National Grange's attempts to remove him from office constitute improper interference with his contractual and business relationships.

Since the filing of this lawsuit, McFarland contends that the National Grange has attempted to proceed with a parallel proceeding adjudicating the National Grange's claims against him. McFarland presents evidence that on approximately February 11, 2013, the National Grange sent a letter to McFarland informing him that it would be conducting a "Grange Trial" to adjudicate Luttrell's claims against him. (McFarland Decl. ¶17, Ex. H.) The letter stated that McFarland would be required to pay the estimated costs of the Grange Trial in the amount of \$10,208 in order to participate and present a defense. (*Id.*) The Grange Trial was originally scheduled to begin on March 14, 2013. (*Id.*)

McFarland now moves for a preliminary injunction enjoining the National Grange from proceeding with the Grange Trial while this action is pending. McFarland contends that it would be improper to allow the Grange Trial to go forward before a final determination in this action because the National Grange is effectively seeking the same relief in both proceedings. McFarland argues that a preliminary injunction is necessary in order to preserve the status quo while this action is pending, and that allowing the Grange Trial to proceed would disrupt this status quo and cause him irreparable harm. McFarland argues that the Grange Trial would irreparably interfere with his employment contract with the California State Grange.

McFarland also appears to argue that the Grange Trial should be enjoined because the trial provisions established by the Grange bylaws constitute an unconscionable contractual provision. The Court does not perceive that the Grange bylaws, which provide for Grange Trials, are analogous to a contractual agreement. McFarland provides no authority for the proposition that a private association governing rule maybe deemed unenforceable because it is unconscionable.

In opposition, the National Grange first cites the general rule that courts should refrain from exercising jurisdiction over the internal operations of private associations. (*See California Dental Assn. v. American Dental Assn.* 23 Cal.3d 346, 353 ("One concern in such cases is that judicial attempts to construe ritual or obscure rules and laws of private organizations may lead the courts into what Professor Chafee called the "dismal swamp."), citing Note, *Developments in the Law - Judicial Control of Actions of Private Associations* (1963) 76 Harv.L.Rev. 983, 990-991.) Here, however, the National Grange has itself

invoked the jurisdiction of this Court to adjudicate the private association dispute described in its Complaint. The National Grange's argument that the Court should now refrain from interfering in the proposed Grange Trial proceedings therefore carries somewhat less weight.

The National Grange also argues that a preliminary injunction is unnecessary because McFarland has adequate legal remedies available to him. The National Grange contends that although McFarland asserts that his employment relationship will be disrupted if the Grange Trial proceeds, McFarland will be permitted to appeal any trial outcome under the Grange bylaws. The National Grange also notes that McFarland did not present any evidence that the Grange Trial would result in his termination from employment. Additionally, the National Grange contends that McFarland has not established that even if the Grange Trial were to be resolved against McFarland, the California State Grange would comply with the determination. The National Grange contends that given the California State Grange's previous rejection of the National Grange's authority, "there is almost no possibility that McFarland's employment contract would be terminated as a result of the National Grange internal procedures, no matter what the result." (Opp. 8:10-12.)

As McFarland argues on reply, however, the potential for irreparable harm arises from the Grange Trial proceedings themselves, not merely from their outcome. McFarland alleges, both in his papers in support of the instant motion and in his Cross-Complaint, that the charges forming the basis for the Grange Trial are false, "sham" charges. McFarland's claims for defamation and intentional interference with contractual and business relations stem from the allegedly false charges against him by Luttrell and other officers of the National Grange. McFarland argues that it would be fundamentally unfair to subject him to the Grange Trial before he has the opportunity to prove his claims that the underlying charges are false.

The National Grange also asserts that McFarland cannot challenge the fairness of the Grange Trial proceedings because as an officer of the Grange, he "pledged to uphold the bylaws of the Order, which conspicuously include the procedures for Grange trials..." (Opp. 9:25-10:1.) The National Grange further argues that because McFarland has utilized the Grange Trial procedure against other individuals in the past, he may not now challenge the imposition of the proceedings against him. However, the Court does not perceive that McFarland seeks to enjoin *all* Grange Trials, merely the proceedings described in the National Grange's February 11, 2013 letter.

Finally, the National Grange contends that the balance of harms favor it because "if the preliminary injunction is granted here, the National Grange will effectively be precluded from pursuing internal Grange trials until the conclusion of this action, including all appeals." (11:20-21.) The Court cannot agree with this statement. A preliminary injunction enjoining the Grange Trial proceedings against McFarland, based on the unique facts in this case, would have no bearing on any other pending Grange Trials against other individuals. The National Grange would be prohibited from proceeding with McFarland's Grange Trial only.

In deciding whether to enter a preliminary injunction, the court must evaluate two interrelated factors: (1) the likelihood that the applicant will prevail on the merits at trial, and (2) the interim harm that the applicant will likely suffer if preliminary relief is not granted, as compared to the likely harm that the opposing party will suffer if the preliminary injunction issues. (See, e.g., *Langford v. Superior Court (Gates)* (1987) 43 Cal.3d 21, 28.) One of these two factors may be accorded greater weight than the other depending on the applicant's showing. (See *Commons Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 447.)

Here, the Court concludes that McFarland has made a sufficient showing that a preliminary injunction enjoining the Grange Trial is necessary to preserve the status quo until a final determination in this action. If the Grange Trial is allowed to proceed prior to an adjudication of McFarland's claims that the

underlying charges are false, fundamental unfairness sufficient to constitute irreparable harm may result. The Court has already noted the irony that it is The National Grange which initiated the instant litigation, seeking the same relief it now claims the Court should distance itself from by abstaining from the dispute.

Further, because the injunction would apply only to this particular Grange Trial, the balance of harms favors McFarland. The National Grange has made no showing that it would be harmed by a temporary injunction of McFarland's Grange Trial.

Accordingly, the motion for preliminary injunction is granted.

Bond is set in the amount of \$10,000.

The prevailing party shall prepare a formal order for the Court's signature pursuant to C.R.C. 3.1312, which the Court will sign upon proof that the bond has been posted.

COURT RULING

The matter was argued and submitted.

The Court takes this matter under submission.