

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Perry M. Buckner III, Circuit Court Judge

Appellate Case No. 2018-000853

Ryan McAvoy..... Appellant.

v.

Hilton Head Island-Bluffton Chamber of Commerce,Respondent,

SUPPLEMENTAL RECORD ON APPEAL

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Certificate of Counsel

Attachment

Order Granting

Motion to Dismiss Amended Complaint

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
Calvin "Skip" Hoagland,)
)
)
Plaintiff,)
)
)
v.)
)
Beaufort Regional Chamber)
of Commerce,)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2017-CP-07-01825

ORDER GRANTING
MOTION TO DISMISS
AMENDED COMPLAINT

Calvin "Skip" Hoagland sued the Beaufort Regional Chamber of Commerce ("Chamber"), seeking relief under S.C. Code § 33-31-1604 after the Chamber refused to comply with his demand to inspect its records. Hoagland, however, lacks standing to pursue this claim. This Court therefore grants the Chamber's motion to dismiss.

Factual Background

Skip Hoagland joined the Chamber on October 29, 2015, when he paid the \$325 annual membership dues.¹ Am. Compl. ¶ 7. Within the next few months, Hoagland sought to inspect and copy the Chamber's records. Am. Compl. ¶ 10.

The Chamber refused to allow Hoagland to inspect its records, writing him in March 2016 that it did not believe his request was "made in good faith or for a proper purpose." Am. Compl. ¶ 11. About a month later, on April 22, 2016, the Chamber mailed Hoagland a check for \$325 and informed him that his membership had been

¹ As it must, the Court takes as true all well-pled allegations in deciding the Chamber's motion to dismiss. See *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014).

terminated. Am. Compl. ¶ 12. The Chamber never allowed Hoagland to inspect or copy its records. Am. Compl. ¶ 14.

Hoagland filed his original complaint on September 5, 2017, more than sixteen months after the Chamber terminated his membership. In that complaint, he challenged both the Chamber's termination of his membership and its refusal to comply with his demand to inspect and copy records. The Chamber moved to dismiss that complaint, in part based on the fact that Hoagland's claims regarding his termination were untimely under S.C. Code § 33-31-621(d), which requires any challenge to the termination of a membership in a nonprofit corporation to be brought within one year.

In response to the motion to dismiss, Hoagland filed his amended complaint. This second complaint includes only one claim, which seeks relief under § 33-31-1604. Hoagland seeks a declaration that the Chamber wrongly denied his request to inspect and copy records and an order that he is entitled to inspect those records and to his costs and attorney's fees, all as allowed by § 33-31-1604. Am. Compl. ¶¶ 21-24.

Legal Standard

Every plaintiff must have standing. If a plaintiff does not standing, a court lacks subject-matter jurisdiction over the case. *Anders v. S.C. Parole & Cmty. Corr. Bd.*, 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983). Whenever a court lacks subject-matter jurisdiction, the case must be dismissed pursuant to Rule 12(b)(1), SCRPC. *Edens v. Bellini*, 359 S.C. 433, 440, 597 S.E.2d 863, 867 (Ct. App. 2004). The party bringing a claim bears the burden of establishing standing. *Sea Pines Ass'n for*

Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res., 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

Analysis

A plaintiff has three avenues for proving standing: “(1) by statute; (2) through the rubric of ‘constitutional standing,’ or (3) under the ‘public importance’ exception.” *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). In his opposition to the motion to dismiss and at the hearing, Hoagland invoked only statutory standing as the basis for bringing this claim.² But Hoagland does not have statutory standing, and the case must therefore be dismissed.

A plaintiff has statutory standing only “when a statute confers a right to sue on a party.” *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013). “[D]etermining whether a statute confers standing is an exercise in statutory interpretation.” *Id.*

² Even if Hoagland had invoked constitutional standing or the public-importance exception, those arguments would have failed. *First*, on constitutional standing, Hoagland is unable to meet the redressibility prong because the only available remedy for the statutory right he seeks to vindicate is the statutory remedy of § 33-31-1604, which does not apply to former members of a nonprofit corporation. *See See Daniel v. Conestee Mills*, 183 S.C. 337, 191 S.E. 76, 79 (1937) (“Where a statute creates a new right and prescribes the remedy of enforcing it, the statutory remedy is exclusive.”); *cf. See Sea Pines Ass'n for Prot. of Wildlife, Inc.*, 345 S.C. at 602-03, 550 S.E.2d at 292 (explaining that when even a favorable decision from a court cannot provide relief, then the plaintiff has not met his burden of proving standing).

Second, on the public-importance exception, that doctrine applies only in cases involving government action or public expenditures. *See, e.g., Sloan v. Dep't of Transp.*, 379 S.C. 160, 170-71, 666 S.E.2d 236, 241 (2008) (challenge to an emergency procurement that did not involve a published invitation for bids was proper); *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004) (challenge to the “eligibility of South Carolina’s governor to serve in this State’s highest elected office”). When—as here—a case does not raise these issues, this exception to the standing requirement is inapplicable. *See, e.g., Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 80-81, 753 S.E.2d 846, 853 (2014) (refusing to apply the public-importance exception when the “case presents no issue of the constitutionality or legality of government action”).

Our supreme court has explained that the “cardinal rule of statutory construction is to ascertain and effectuate legislative intent.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). To do this, a court must first look to the words of a statute and give those words their plain meaning. *State v. Jacobs*, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011). When a “statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Id.*

Only when a statute’s language is ambiguous may a court go beyond the words of the statute. When faced with ambiguous language, a court should read a statute “in a sense that harmonizes with its subject matter and accords with its general purpose.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). In other words, the “statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.” *Id.*

The statute at issue here—§ 33-31-1604—is part of South Carolina’s Nonprofit Corporation Act, S.C. Code § 33-31-101 *et seq.* This particular section provides a remedy to a “member” of a corporation whose request to inspect records under § 33-31-1602 is wrongly denied.

Specifically, § 33-31-1604 uses “member” seven times in discussing who may obtain relief. The Nonprofit Corporation Act defines a member as “a person entitled, pursuant to a domestic or foreign corporation’s articles or bylaws, without

regard to what a person is called in the articles or bylaws, to vote on more than one occasion for the election of a director or directors or any other matter which under the terms of this chapter requires approval by the members." *Id.* § 33-31-140(23)(a).

This definition clearly encompasses only a current member. Indeed, only a current member is entitled to vote. A former member was once entitled to vote, but is not anymore. Therefore, § 33-31-1604 provides a remedy only for current members of a nonprofit corporation.

This analysis of the plain language of the Nonprofit Corporation Act is sufficient for determining the meaning of "member." But if any doubt could exist that a "member" means a current member based on the plain language of the statute, looking at the remainder of the Act removes it. Interpreting "member" to be a former member makes no sense in other provisions of the Act. For example, § 33-31-620 provides that a member may resign at any time, and § 33-31-621 sets forth a process for terminating, expelling, or suspending a member. These sections could not logically apply to a former member, who could not possibly resign or be terminated, expelled, or suspended. Thus, a "member" must be a current member and cannot include a former member.

Section 33-31-1604 provides a remedy only to current members. And therefore only current members have standing to seek relief under that section. As a former member, Hoagland does not have standing to seek relief under § 33-31-1604.

That is not to say that Hoagland never could have sought relief under § 33-31-1604. In fact, he had an entire year after his April 2016 termination to seek relief. Hoagland had one year to challenge his termination under § 33-31-621(d), and if he prevailed on that claim, then he would have been declared a member, which means he would have had standing to pursue a claim under § 33-31-1604. But Hoagland did not timely challenge the termination of his membership, which means he is a former member and unable to seek relief now under § 33-31-1604.

Conclusion

Because Hoagland lacks standing to bring this claim, the Court lacks subject-matter jurisdiction. Therefore, the Court GRANTS the motion to dismiss the amended complaint, and this case is dismissed.

IT IS SO ORDERED.

Honorable R. Lawton McIntosh
Circuit Judge

December __, 2017
_____, South Carolina



Beaufort Common Pleas

Case Caption: Calvin Skip Hoagland VS Beaufort Regional Chamber Of Commerce
Case Number: 2017CP0701825
Type: Order/Dismissal

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S/R.LAWTON McINTOSH

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SUPPLEMENTAL RECORD ON APPEAL

I certify that I have caused the Supplemental Record on Appeal to be served upon Respondent by United States Mail on March 14, 2019, addressed to its attorney of record, Wm Grayson Lambert, Burr & Forman, LLP, PO Box 11390, Columbia, SC 29211.

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