

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**CAROLE ELIZABETH VEST,**

Plaintiff,

v.

**ANGELA MCARDLE, et al.,**

Defendants.

Civil Action No. 2024-CAB-002804

Hon. Maurice A. Ross

Next Event:

Exchange Lists of Fact Witnesses

December 3, 2024

**DEFENDANTS ANGELA MCARDLE AND LIBERTARIAN NATIONAL  
COMMITTEE'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS**

Defendants Angela McArdle (“Ms. McArdle”) and the Libertarian National Committee, Inc., (the “LNC”) (collectively, “Defendants”), by and through their undersigned counsel, hereby submit this Reply to Plaintiff Carole Elizabeth Vest’s Opposition to Defendants’ Motion to Dismiss the Amended Complaint and in support thereof state as follows:

Plaintiff’s Opposition fails on several grounds: (1) an anonymous demand from an unidentified person is legally defective; (2) Ms. Vest was required to wait 90 days before bringing this lawsuit and she cannot avoid this requirement because she failed to show irreparable injury to the LNC; (3) Ms. Vest does not have standing to bring a direct breach of fiduciary duty claim; (4) Ms. McArdle does not owe a fiduciary duty to Ms. Vest and/or Ms. Vest’s alleged injuries were caused by third parties; and (5) in response to Ms. Vest’s improper demand, the LNC stated that it would comply with a request properly made by a director.

**A. Ms. Vest failed to meet the statutory prerequisite for bringing a derivative lawsuit.**

In her Opposition, Ms. Vest takes the position that a demand letter from a lawyer who purports to represent a number of anonymous individuals, including an unidentified member of

the LNC, meets the statutory requirement for a demand in a derivative lawsuit. Contrary to her position, several courts have held that a pre-suit demand cannot be made anonymously in a derivative action. The U.S. District Court for the District of Delaware held that a demand letter from an attorney that did not identify a shareholder was “wholly insufficient and calculated to circumvent the demand requirement by not identifying the shareholder.” *Smachlo v. Birkelo*, 576 F. Supp. 1439, 1445 (D. Del. 1983). The District Court reasoned that:

“A company’s board of directors should not be required to act upon the demand of an alleged shareholder when that shareholder fails to properly identify himself. If this Court were to hold otherwise, then unscrupulous plaintiffs could circumvent the demand requirement by framing their demands in vague, ambiguous terms. The plaintiff must exercise good faith in making his demand. [...] The board is required to act reasonably in considering a shareholder’s demand. However, the board is not charged with being clairvoyant; it cannot be expected to act where the shareholder does not specify who he is. *Id.* at 1444 (internal citations omitted).

*Smachlo* is instructive in the instant matter because it is factually similar. Like in *Smachlo*, here, the demand letter<sup>1</sup> came from an attorney and does not disclose the LNC member’s identity. Ms. Vest is not identified anywhere in the demand letter. “The demand requirement is clearly not a technical procedural requirement.” *Smachlo*, 576 F. Supp. at 1443. Pursuant to D.C. Code § 29–411.02, only certain members and directors of a nonprofit corporation can bring a derivative lawsuit. To properly address the demand, the LNC must know who the member that made the demand is, so that it can confirm that the member has standing under the D.C. Code.

---

<sup>1</sup> Ms. Vest *falsely* alleges that she made a demand on February 28, 2024. The LNC only received the demand letter dated March 28, 2024 from opposing counsel that he sent via email, a copy of which is attached as Exhibit B to Defendants’ Motion to Dismiss Amended Complaint. Ms. Vest did not attach a copy of her purported February 28, 2024 pre-suit demand to the complaint to show that she satisfied the statutory requirements. Because the court’s subject matter is challenged, no presumption of truthfulness attaches to Ms. Vest’s allegations, and the Court may consider matters that are outside of the pleadings. *See Heard v. Johnson*, 810 A.2d 871, 878 (D.C. 2002); *UMC Dev., LLC v. D.C.*, 120 A.3d 37, 43 (D.C. 2015).

Ms. Vest argues that because the statute does not expressly require her to state the name of the person making the demand, the March 28, 2024 letter is legally sufficient. However, adopting such interpretation of D.C. Code § 29-411.03 will render this section and the statute governing nonprofit corporations meaningless. It will lead to numerous frivolous lawsuits that will flood the court's busy docket and will require a nonprofit corporation to spend its scarce resources to investigate demands from anonymous persons claiming that they are members or directors. Thus, the Court should reject Ms. Vest's interpretation and dismiss the derivative action based on a legally insufficient pre-suit demand. *See Richelson v. Yost*, 738 F. Supp. 2d 589, 600 (E.D. Pa. 2010) (granting a motion to dismiss for lack of standing because the demand letter was legally inadequate); *see also In re Schmitz*, 285 S.W.3d 451, 455 (Tex. 2009) (holding that a pre-suit demand must list a shareholder's name and cannot be made anonymously even though the statute did not expressly require it).

In her Opposition, Ms. Vest admits that she filed her lawsuit prior to the expiration of 90 days from the demand date. *See Opp.* at 5. Ms. Vest contends that the 90-day requirement should not apply because the LNC would suffer irreparable harm due to the Libertarian National Convention being three weeks away at the time the original complaint was filed. *See Opp.* at 6, 8. Ms. Vest's argument is flawed as evidenced by the record. Ms. Vest filed her original Complaint on May 3, 2024, but she *never* served the Defendants with her original complaint. On June 20, 2024, Ms. Vest filed a motion to extend time for service, which this Court granted. Two months later, on August 13, 2024, she filed the Amended Complaint. She then served Ms. McArdle and the LNC with the Amended Complaint on August 29 and August 15, respectively. While Ms. Vest alleges that the LNC would have suffered irreparable harm had she waited 90 days to file a lawsuit,

she, nevertheless, waited for over three months, and over 90 days, to serve Defendants and put them on notice of the derivative lawsuit.

Further, Ms. Vest cites to her *original* complaint's allegations, which she never served on Defendants, to support her claim of irreparable harm. *Id.* at 6-7. Ms. Vest does not allege an irreparable injury to the LNC as an exception to the 90-day rule in her Amended Complaint. Ms. McArdle was lawfully reelected as Chair of the LNC on May 25, 2024 (Amend. Compl. ¶ 14) in accordance with LNC voting procedures. Based on these undisputed facts alone, Ms. Vest fails to establish that she satisfied an exception to the 90-day rule requirement under D.C. Code § 29-411.03, and her derivative action must be dismissed. *See Bronner v. Duggan*, 249 F. Supp. 3d 27, 43 (D.D.C. 2017) (granting a motion to dismiss and finding that plaintiffs did not make an adequate pre-suit demand under the D.C. Nonprofit Corporation Act when they filed a civil derivative action prior to expiration of the 90-day period following delivery of the demand).

**B. Ms. Vest failed to meet her burden of establishing that the LNC's inquiry was unreasonable and that the LNC directors were not independent.**

Demand statutes are rooted in “the basic principle of corporate governance that the decisions of a corporation—including the decision to initiate litigation—should be made by the board of directors or the majority of shareholders. *Bronner*, 249 F. Supp. 3d at 43. Accordingly, directors are entitled to a presumption that they were faithful to their fiduciary duties and so, in the context of pre-suit demand, the burden is upon the plaintiff in a derivative action to overcome that presumption. *In re Danaher Corp. S'holder Derivative Litig.*, 549 F. Supp. 3d 59, 66 (D.D.C. 2021) (internal quotations omitted). Here, Ms. Vest failed to overcome the presumption that the LNC directors acted in good faith or that the inquiry was conducted in a reasonable manner.

The designation of members of the Investigative Committee was approved by a vote of 11 out of 14 directors. *See* Exh. C to Motion. The Investigative Committee conducted an investigation

and reported to the LNC that the derivative lawsuit was not in the best interest of the LNC. Ms. Vest bears the burden of proving that the investigation was not conducted in a reasonable manner. *Behradrezaee v. Dashtara*, 910 A.2d 349, 358 (D.C. 2006). Only after she establishes that, the burden shifts to the LNC to show that the inquiry was reasonable. Ms. Vest does not allege any specific facts that support her allegations. She argues that because no reports or findings were provided by the LNC, the inquiry was not reasonable. Such conclusory statements are not sufficient to overcome the presumption that the directors acted in good faith and that the investigation was conducted in a reasonable manner. Ms. Vest relies on *Boland v. Boland*, 423 Md. 296, 332, 31 A.3d 529, 550 (2011) for her assertion that the LNC was required to produce evidence of its findings. *Boland*'s reasoning is inapplicable in the instant matter as it involves a motion for summary judgment, a fully developed record and arises in the context of the special litigation committee; *Boland* is factually different. The instant matter is at its inception, and Ms. Vest is required to plead facts with particularity to overcome the presumption of independence and reasonableness. Ms. Vest failed to do so in her Amended Complaint; instead, she introduced new facts in her Opposition, and thus, these facts should be disregarded.

Ms. Vest also argues that the selected Directors' association with Mises Caucus, a caucus within the Libertarian Party, somehow negates their independence. The *Boland* court explained that an independent director is one that neither "appear[s] on both sides of a transaction nor expect[s] to derive any personal financial benefit from it in the sense of self-dealing." *Boland*, 423 Md. at 329. Ms. Vest does not explain how the Investigative Committee Directors' decision not to pursue the derivative lawsuit personally benefits *any* of the Directors – much less a majority or all of them. *See generally In re Danaher Corp. S'holder Derivative Litig.*, 549 F. Supp. at 65 ("a derivative complaint must plead facts specific to each director, demonstrating that at least half of

them could not have exercised disinterested business judgment in responding to a demand”). Accordingly, because Ms. Vest failed to establish that the LNC’s investigation was not conducted in a reasonable matter or that the directors were not independent, the Court should dismiss the derivative action pursuant to D.C. Code § 29–411.05.

**C. Ms. McArdle does not owe a fiduciary duty to Ms. Vest.**

In her Opposition, Ms. Vest attempts to rebut Defendant’s alternative argument for dismissal of Count II but does not address the lack of standing argument in support of Defendants’ motion to dismiss. She mistakenly states that Ms. McArdle owes a fiduciary duty to Ms. Vest citing to cases discussing a fiduciary duty in the context of an attorney-client and employer-employee relationship. Deciding whether a fiduciary relationship exists in a particular case requires “a searching inquiry into the nature of the relationship, the promises made, the type of services or advice given and the legitimate expectations of the parties. *Council on Am.-Islamic Rels. Action Network, Inc. v. Gaubatz*, 793 F. Supp. 2d 311, 341 (D.D.C. 2011). There is no personal relationship of confidence or trust between Ms. McArdle and Ms. Vest. Ms. McArdle did not make any promises or offer any services or advice to Ms. Vest.

Ms. McArdle is an officer of the LNC, and she serves the LNC – not Ms. Vest. As stated in Defendants’ motion to dismiss, the Chair of a political party does not owe a fiduciary duty to its members. Ms. Vest is not an officer of the LNC, so Ms. McArdle does not owe her any fiduciary duties. Furthermore, the injuries alleged by Ms. Vest are attributable to third parties. For instance, Ms. Vest alleges that “other LNC members” requested not to include Ms. Vest in meetings. *See* Opp. at 17. Contrary to her assertion, Ms. Vest can prove no set of facts in support of her claim that would entitle her to relief, and thus, the Court should dismiss Count II.

**D. The LNC is not obligated to provide records to unidentified directors.**

As more fully discussed above, Ms. Vest's March 28, 2024 demand for records was legally inadequate because she failed to identify herself. Accordingly, the LNC was not obligated to provide its books and records to unidentified members. *Smachlo*, 576 F. Supp. at 1443.

Based on the foregoing and the arguments raised in Defendant's Motion to Dismiss, the Court should reject Ms. Vest's arguments and dismiss the Amended Complaint.

Dated: November 22, 2024.

Respectfully submitted,

/s/ Alina Chernin

Alina Chernin (D.C. Bar No. 1671161)

Philip T. Abbruscato (D.C. Bar No. 1656066)

**FOX ROTHSCHILD LLP**

2020 K Street N.W., Suite 500

Washington, D.C. 20006

Telephone: (202) 794-1259

Facsimile: (202) 461-3102

AChernin@foxrothschild.com

PAbbruscato@foxrothschild.com

*Counsel for Defendants*

*Angela McArdle and Libertarian National  
Committee*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 22, 2024, I filed a copy of the foregoing in the D.C. Superior Court's e-filing system, which will serve all parties of record.

/s/ Alina Chernin

Alina Chernin