

IN THE STUDENT SUPREME COURT
IN AND FOR THE FLORIDA STATE
UNIVERSITY

JOHN E. WALKER,

Plaintiff,

v.

ALFREDO CORTEZ, RICHELL De
JESUS, ALLONA DOUGLAS, AND
STEVEN SPEAR, JR.,

Defendants,

*Kaney and Moorhead, JJ. Deliver the
Opinion of the Court*

SYLLABUS

This case comes to the Court on a Complaint filed by John E. Walker, (Plaintiff), against Alfredo Cortez, Richell De Jesus, Allona Douglas, and Steven Spear, Jr. (Defendants). The thrust of the petition is that three of the Defendants, specifically De Jesus, Douglas, and Spear, violated five provisions of the Student Body Statutes, and Cortez violated four. Out of the nineteen alleged violations, all but one for each Defendant was a violation of Chapter 200, the Code of Ethics for student government officers. By the end of both cases in chief, the Court had come to the unanimous decision that no reasonable trier of fact could find for the Plaintiff. Accordingly, it voted, and subsequently entered a Directed Verdict for Defendants. Student Supreme Court Rules of Procedure, 6(g).

ISSUES

1. Whether Defendants violated section 100.4 of the Florida State University Student Body Statutes (FSU Statutes) relating to professional misconduct?
2. Whether Defendants use Student Government Association (SGA) facilities for the benefit of a third party pursuant to section 205.3(B) of FSU statutes?
3. Whether Defendants provided unlawful compensation under section 205.3(C) of the FSU statutes?
4. Whether Defendants induced governmental action under section 205.3(D) of the FSU statutes?
5. Whether Defendants (De Jesus, Douglas, and Spear) received an unlawful contribution as a candidate under section 714.2(I) of the FSU statutes?

HOLDING

This Court entered a Directed Verdict at the February 15, 2018 hearing in Favor of Defendants.

**FACTUAL BACKGROUND AND
PROCEDURAL HISTORY**

The case began on October 27, 2017; Alfredo Cortez received an email confirmation (entered into evidence), confirming a request for space in the Oglesby Union (Union) at designated times. Specifically, on: Thursday, November 30; Friday, December 1; Saturday, December 2; Sunday, December 3; and Monday, December 4, 2017. At the hearing before this Court, Mr. Cortez admitted that he was unaware of this email, and the substance of it, until December 2, 2017. Enter Steven Spear, Jr. Mr. Spear and Mr. Cortez received an email from SGA Faculty Advisor, Danielle

Acosta (entered into evidence). In the email, Ms. Acosta indicated that she became aware of room reservations made for the Unite Party under Mr. Cortez's name, and listing a "group" as "Student Government." Ms. Acosta acknowledged in the email that she did not know if this reservation was intentional or accidental. Approximately thirty minutes later Mr. Cortez responded, "[w]hile I have no association with the party, I will reach out to them to rectify the situation." Two days later, December 4, Mr. Spear responded to the email that "[a]ll of the room reservations had been fixed" and the reply seemed satisfactory to Ms. Acosta. The meetings were subsequently held under the "fixed" reservations, and after two months had past, this action was instituted.

Plaintiff filed his Complaint on February 8, 2018 alleging a grand total of nineteen violations, spread among four individuals, of both the Code of Ethics and Elections Code. Sections 100.4, 205.3(B), 205.3(C), 205.3(D), 714.2(I), Student Body Statutes (2018).

The first allegation brought against Defendants is for a violation of section 205.3(B), Student Body Statutes (2018). Specifically, that Defendants, individually, used SGA facilities for a third-party benefit. The statute provides, "Misuse of Student Government Association Property: No officer or employee will use or attempt to use Student Government Association property, facilities, resources, or personnel to secure a gift, reward, privilege, benefit, or exemption for anyone." *Id.* Plaintiff contends that all SGA members act in their official capacity at all times, and as such, that capacity cannot be put aside under any circumstance. Defendants argue that this cannot be the case, since there are times where the two must be separated, especially when nearing an election, as political affiliation has generally

been thought of as an inappropriate means of garnering support when acting as an SGA member. The counter argument Respondents relied on, however, is found in that exact generalization, if an SGA member always acted in their official capacity, how could they ever be both an incumbent, and be affiliated with a political party? In their eyes, the two are clearly separable, since incumbents have traditionally been allowed to run with a party, so long as they abide by the statutes which relate to campaigning for office. Additionally, Mr. Cortez asserts the time-old "it wasn't me" defense, since as Mr. Spear admits, Mr. Spear made the reservation.

The second issue questions whether or not Defendants were unlawfully compensated. The statute provides, "Unlawful Compensation: No officer or employee shall solicit, accept, provide or attempt to provide any material items of value in cases that would influence, or appear to influence any vote, action, or judgment." Section 205.3(C), Student Body Statutes (2018).

The third allegation is based upon section 205.3(D), Student Body Statutes (2018), specifically that as an officer of SGA, Defendants did in fact "knowingly aid, advise, encourage, or threaten another officer or employee of Student Government Association or student to act in violation of" any applicable law or rule, as it applies to their capacity as a member of SGA. Plaintiff asserts that both Ms. De Jesus, and Ms. Douglas advised Mr. Spear to make the reservations in question, thus violating some portion of the applicable statutes. Moreover, Plaintiff contends, at the very least, Mr. Cortez would have been on constructive notice of the reservations as early as October 27, 2017. This constructive notice would then satisfy the aid requirements of Mr. Spear's

alleged violation of those same statutes. Defendants note that this is a dual layer statute, requiring an SGA member to aid, advise, encourage, or threaten another SGA member to violate the applicable laws and rules; thus, relying on their previous argument, the statute could not have been violated since at least one of the two required parties would have been acting outside the scope of their official duties.

The fourth allegation is grounded in Section 100.4, Student Body Statutes (2018), which outlines that “All Student Body officers must comply with the Student Body Statutes” and that “[w]illful and deliberate disregard of these Statutes and/or section thereof shall be grounds of impeachment[.]” To support their fourth charge, Plaintiff points to the strict liability theory that since the reservation existed at some point in time under the group “Student Government,” Defendants must have, at some point, violated the statutes, and the violation was willful and deliberate. Respondents disagree. They contend that if the statutes were violated in some way, they were not done so in a willful and deliberate manner.

The final allegation is not made against Mr. Cortez. It alleges that the other Defendants “receive[d] contributions of [some] kind from Student Government Association organizations.” Section 714.2(I), Student Body Statutes (2018). Contribution is defined as “The gift or furnishing of money, materials, supplies, professional services, or any in-kind contribution to any campaign in any form.” Section 701.1(C), Student Body Statutes (2018). Walker’s contention was that the use of the rooms in the Union constitute a contribution to Ms. Pierre’s campaign. Respondents, in their defense, argue this statute lacks the “appearance of” language found in section 205.3(C), *supra*.

At the close of Plaintiff’s case in chief the Court entered Directed Verdict for all allegations against Mr. Cortez, and as to section 205.3(D), *supra*, against the remaining respondents. The Court found that Plaintiff had not met the burden of establishing a prima facie case for section 205.3(D). *See Friedrich v. Fetterman and Associates, P.A.*, 137 So. 3d 362, 365 (Fla. 2013). After Defendants’ case in chief, the Court again heard, deliberated on, and unanimously granted their Motion for Directed Verdict. Here, the Court’s analysis changed. The Court concluded that no reasonable trier of fact, viewing the evidence in the light most favorable to the non-moving party, could sustain a verdict in favor of the non-moving party, here Plaintiff. *See Sanders v. ERP Operating Ltd. P’ship*, 157 So. 3d 273, 277 (Fla. 2015) (“In order for a court to remove the case from the trier of fact and grant a directed verdict, there must only be one reasonable inference from the plaintiff’s evidence.”)

REASONING

1. Use of SGA Facilities for Third Party Benefit (205.3(B))

In order to prevail on a claim under 205.3(B) Plaintiff must show that an individual acted in their capacity as office or employee of student government, used or attempted to use SGA property, facilities, resources or personnel, in order to secure a gift, reward privilege, benefit, or exception for anyone.

There is no evidence in this case that any named defendant acted in their official capacity in the manner set forth in 205.3(B). Defendants argue that they cannot act in their capacity as officers of SGA at all times,

particularly referring to times of campaigning or serving their political party.

Assuming *arguendo* that this Court rejects that argument, there is still no evidence that any gift, reward, privilege, benefit, or exception was secured in this case. Plaintiff's argument is based upon speculation that SGA bribed the Unite Party with a material benefit of excess room reservations in order to secure Stacey Pierre as Unite's student body presidential candidate. Unfortunately, for the Plaintiff, there is no evidence presented to this Court that bolsters this argument. Each person who took the stand at the February 15 hearing who attended the Unite Party meetings testified that the meetings were done in order to schedule and conduct interviews for Unite Party positions.

2. Unlawful compensation (205.3(C))

Plaintiff points to the use of Union spaces, at one point reserved under the group name "Student Government," as SGA attempting, or appearing to attempt, to use the space reservation as influence over the Unite Party to nominate Ms. Pierre, a member of the current SGA administration, as their candidate for Student Body President, which is the same position Plaintiff currently seeks. Defendants ground their defense in two main points. First, again, that the spaces were reserved by someone not acting in their official capacity as an SGA member, and second, perhaps more subtly, the space is not of material value, since the spaces were reserved without fee. Mr. Cortez, again, asserts that he at no time was associated with any of the actions of the other Respondents.

In sum, Plaintiff argues that the use of the room space is an item of material value that influenced Unite Party's decision to slate Ms. Pierre as their presidential candidate.

Defendants respond that they were (1) not acting in their official capacities as officers of SGA, (2) the room is not an item of material value, and (3) nevertheless did not influence (or appear to influence) any sort of vote, action, or judgment.

This Court found at the hearing that all defendants were absolved of this charge. First, it is certainly tough to say that these individuals were acting within the official capacities as SGA officers. Assuming *arguendo* that they were acting in their capacity as officers, however, this Court fails to find the remaining requirements under section 205.3(C) to be satisfied.

The record in this case is void of any evidence reflecting any sort of *quid pro quo* regarding the room reservations. The rooms themselves are of no cost to Registered Student Organizations (RSO) at FSU. Plaintiffs contend, however, that there is a "three per week" limit on room reservations for RSOs, with the only exception being SGA. Plaintiff asserts that SGA reserved more rooms in one week than is allowed under the room reservation system in order to circumvent the "three per week" restriction in return for Unite's guarantee that Ms. Pierre would be their candidate. Plaintiff presents the following argument in his complaint:

Given the facts, it would not be unreasonable for a student or individual to conclude that the space reserved by Student Government on behalf of The Unite Party was in exchange for them slating Ms. Pierre, current Student Body Vice President, as their candidate for Student Body President. Therefore, there exists the appearance that the space was reserved by Student Government in order to influence the actions,

votes, and judgments of The Unite Party.

See Plaintiff's Complaint.

This Court, however, finds that the rooms reserved were not of material value and were not reserved in a manner to influence (or appear to influence) any sort of action. Mr. Spear immediately rectified the room reservation problem when contacted by Ms. Acosta. Moreover, no evidence in this case shows an exchange of benefits or compensation of any kind in regard to the room reservations.

3. Inducing Government Action (205.3(D))

Plaintiff contends that defendants, Ms. De Jesus and Ms. Douglas, advised Mr. Spear to make the relevant room reservations. In order to prevail under this section Plaintiff must show that the SGA members were acting in their capacity as SGA officers, they aided, advised, encouraged, or threatened another officer, employee, or student to act in violation of any Federal, Florida or FSU Law, Student Conduct or Honor Code.

Defendants must have acted as an officer. In this situation, Defendants were acting as officers of the Unite Party (aside from Mr. Cortez who is not affiliated with the party). Even if Defendants were acting as officers of SGA, however, there is no evidence to support the claim that they made Mr. Spear make the reservations. Each Defendant testified that they did not coerce Mr. Spear in any way, Mr. Spear testified that he was not directed to make these reservations in order to violate any pertinent code or statute, and no other witness presented evidence to the contrary.

Based upon the evidence presented, this Court absolves Defendants of all allegations under section 205.3(D). Mr. Spear expressly testified that he booked the Union rooms in his capacity as Campaign Chair for the Unite Party. Mr. Spear acknowledged that this decision was solely within his discretion and something he planned on his own. Looking to other allegations and other facts of the case it is clear that a mistake was made on the part of Mr. Spear, however, this mistake was not willful nor deliberate and was not shown to be a decision he was coerced to make.

4. Professional Misconduct (100.4)

Plaintiff accused Defendants of violating section 100.4 of FSU Statutes. Section 100.4 contains the following language:

All Student Body officers must comply with the Student Body Statutes. Willful and deliberate disregard of these Statutes and/or section thereof shall be grounds of impeachment in accordance with Article VII, Section 3 of the Student Body Constitution.

FSU Stat. § 100.4. The key language which absolves all defendants of wrongdoing from this section is the express requirement that there be a willful and deliberate disregard of the student body statutes or sections.

The evidence submitted to this court does not reflect a situation in which members of the Student Government Association were willfully or deliberately abusing their powers and violated student body statutes.

Alfredo Cortez is the named defendant whose name appeared on the original booking reservation which became the center of this dispute. Mr. Cortez testified at the

hearing that he did not make the booking and was not involved in the booking process. During the hearing Steven “Stevie” Spear testified that he booked the room under Mr. Cortez’s name due to a fault in the drop-down menu on the booking website which allows an individual to change the name of the individual placing the booking. Danielle Acosta, Director of Student Affairs, notified both Mr. Spear and Mr. Cortez that the rooms were not properly booked pursuant to student body statutes.

An email dated December 2, 2017 (4:17pm) from Mr. Spear to Mr. Cortez matches the testimony of both Mr. Cortez and Mr. Spear at the February 15, 2018 hearing before this Court. Mr. Spear notes in the email that he “mistakenly booked rooms for Unite under SGA.” *See* 12/2/17 email from Spear to Cortez. Moreover, Mr. Cortez emailed Ms. Acosta on December 2nd and stated that he had “absolutely no association with the party,” yet he would reach out to rectify the situation.

Importantly, Mr. Spear testified that he “mistakenly” booked the reservation under Mr. Cortez’s name. Mr. Spear indicated that the “drop down” menu on the registration page in fact did not have a drop-down option, and Mr. Cortez’s name was the only option available. Mr. Spear assumed that Mr. Cortez’s name was in that position for a reason. Mr. Spear noted that the website was not “user friendly.”

Thus, viewing the evidence presented to this Court in light most favorable to the plaintiffs this Court finds that there was no willful nor deliberate violation of FSU Statute § 100.4, nor any other student body statute. At most, there were negligent actions made by Mr. Spear in his booking process, however, this does not equate to a

willful or deliberate disregard of student body statutes.

5. Unlawful Contribution to Candidate (714.2(I))

Finally, the last allegation comes against Ms. De Jesus, Ms. Douglas, and Mr. Spear. Plaintiff argues that the reservations and use of the Union rooms constitutes a contribution to the Unite Party’s campaigns, particularly Ms. Pierre’s presidential campaign. The argument fails for multiple reasons. This statute requires SGA to have actually contributed to the campaigns of the Defendants in question. Since Unite Party is not a named defendant, however, this statute cannot be violated, since the individuals are not seeking election. The Court found that this allegation, regardless of merit, is barred by the statute of limitations found in Chapter 700, Student Body Statutes (2018), which plainly says the election code is only “in force three (3) weeks prior to an election.”

Conclusion

Directed Verdict is proper where no reasonable trier of fact, when viewing the evidence in the light most favorable to the non-moving party, could find in favor of the non-movant. *See Sanders, supra*. Here the bench, sitting as trier of fact, determined as such. The burden of proof the plaintiff had to meet was “preponderance of the evidence.” Supreme Court Rules of Procedure 4(d). Plaintiff failed to carry this burden.

The evidence presented by the Plaintiff aimed to support a theory that upon taking the Oath of Office, all SGA members are bound in the official SGA capacity at all times. While the Court does not at this time define every instance where one acts in or out of their official duty, it is persuaded here that none of the Defendants acted in their capacity

as SGA officials. No testimony was presented, other than by the Plaintiff himself, that the Defendants acted in their official capacity as SGA members. Witnesses for the defense, including the Defendants, testified they believed that when SGA members act on behalf of an RSO, they are not per se acting on behalf of SGA, but rather act as RSO members. The Court is persuaded that there must be times where the two are separable; in fact, our own case law supports this idea. *See Moorehead v. Riddaugh*, Fla. St. Univ. Rep. (2015). However, it is not good enough that the Court be persuaded, it is that no reasonable trier of fact could find for the Plaintiff. Here the evidence presented, while conflicting, is at best fifty-fifty. The preponderance standard requires something more than a fifty-fifty split. Here, based on one person's testimony, specifically an inherently biased Plaintiff, no reasonable trier of fact could support a finding for the Plaintiff. If this were the case, Defendants in our Court would no longer be innocent until proven guilty, since testimony by a Plaintiff reiterating their Complaint, would be sufficient to support a finding of guilt.

As to the claimed violation of the elections code, this claim is not resolved on its merits. The Court finds that since the election code is only in effect three weeks prior to elections, and the alleged violation occurred prior to that window, the claim is barred by the statute of limitation found within Chapter 700, Student Body Statutes (2018).

While testimony is evidence to be considered by the trier of fact, legal conclusions will not suffice to carry the burden. Here, no evidence other than Plaintiff's naked assertions and conclusions were entered to support his claim. Without more, no reasonable trier of fact could have come to find in his favor. Accordingly, the

Court enters a Directed Verdict, in favor of the Defendants, as to all counts.

It is so ordered.

Donnelly, C.J., Concurring

While I concur in all parts of the Court's opinion, I add the following dicta.

The plaintiff entered a very well plead complaint. Mr. Walker posed a question of ethical importance, and these issues are some of the most pressing in our Student Government. The capability to misuse of government power is as real in our government as it is in any local, state, or national government. It is vital for our actual and visual integrity for students like Mr. Walker to hold Student Government officials to the high level of ethics laid out in the Student Body Statutes. Nothing in this opinion nor the hearing upon which this opinion is based should deter Mr. Walker or any student from bringing further complaints when those we entrust with Student Government power appear to have violated that trust.

The respondents in this case gave testimony that satisfied the Court and no intention could be found for misuse of Government power, misuse of influence, or any ethical violation. In particular, Mr. Spear and Mr. Cortez showed that they had not committed ethics violations, and further they had taken immediate deliberate steps to fix any appearance of a conflict of interest or ethics violation. Both Mr. Spear and Mr. Cortez acted in a manner that displayed an attempt of strict adherence to ethical statutes. We should never expect mistakes to be eradicated, but the speed with which Mr. Spear attempted to rectify the mistake shows this Justice an admirable, ethical Senator.