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

JOHN WALKER,

Plaintiff,

v.

THE UNITE PARTY,

Defendant,
_____/

Moorhead, J. Delivers the Opinion of the Court

SYLLABUS

This case comes before the Court after a removal from the Elections Commission. In essence the case is quite simple, the pro-se plaintiff, John Walker (Walker), alleges that the defendant, The Unite Party (Unite), placed campaign signs around campus improperly. Specifically, that the signs were approved by the Supervisor of Elections, but were not approved twenty-four (24) hours prior to their placement. Section 714.1(A), Student Body Statutes (2018) (SBS).

Unite argues if the signs were placed within the 24 hour waiting period, they are protected by the affirmative defense of Reliance, based on the actions of a governmental third-party. *See generally State v. Harris*, 881 So. 2d 1079, 1084 (Fla. 2004) (elements of Equitable Estoppel defined).

ISSUES

1. Were campaign signs used by Unite prior to the expiry of the twenty-four hour, post-approval, waiting period?
2. Does the affirmative defense of Reliance defeat Plaintiff's claims?

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff, independent candidate for Student Body President, John Walker brought the present action in a lower body, the Election Commission. Walker filed his complaint stating Unite was in violation of section 714.1(A), SBS, and accordingly should be penalized according to the schedule outlined in section 715.5, SBS. We assumed removal jurisdiction over the Election Commission pursuant to Article IV, Section 3(C)(2), 3(C)(4). Neither party contested removal to our Court.

Walker alleges that Unite placed three campaign signs in a manner in violation of section 714.1(A), SBS. Specifically, he alleges that two were placed on or about Landis Green, on or prior to 11 a.m. on February 21, 2018; a third being placed on or about Legacy Walk, on or before 3:15 p.m., on the same day. *See* Complaint, "Relevant Facts," at ¶ 1-3. He additionally alleges that the signs, while approved, had not been approved for the statutorily required time frame before being posted. Section 714.1(A), SBS. Specifically, he alleges the two signs on or about Landis Green were submitted for approval at 11:30 a.m. on February 20, 2018, and the sign placed on or about Legacy Walk was submitted for approval at 8:54 p.m. *See* Complaint, "Relevant Facts," at ¶ 4; *see also* Plaintiff's Exhibit J.

In support of his claims Walker entered into evidence pictures of the three signs, a screenshot of the "Qualtrics" form used to submit material for approval, and a spreadsheet of approved materials obtained from the Supervisor of Elections. These were entered over the vehement and voluminous

objections of Unite, the Court noting that the Florida Rules of Evidence (said at trial "Federal Rules of Evidence") would be considered, but would not be binding. *See* Sup. Ct. R. Proc. 4(f). The Court did note the hearsay nature of the documents entered, and assured counsel the Court understood the rules of evidence, both Florida and Federal, and would weigh those factors in coming to its determination; however, it did not want to use the rules as a bar to the presentation of evidence, and subsequently the record for appeal.

At the conclusion of Walker's case in chief Unite asserted the affirmative defense of Reliance. The Court notes numerous types of reliance can create an affirmative defense. Specifically here the reliance is on the promise, or representations, of a governmental third party, meant for the benefit of both Unite and Walker, as promisees. *See* Michael B. Metzger, et al., *Promissory Estoppel and Third Parties*¸ 42 Sw. L. J. 931, 945-46 (1988). Unite claims their reliance on the promise of a governmental third party, as to how statutory mandates are to be complied with, absolves them of liability. Walker contends the promise was unreasonably relied on, since the representations made by the Supervisor of Elections were facially incorrect, and Unite knew or should have known the representation of material fact was incorrect, when the representation was made.

ANALYSIS

I

The first question requiring resolution is whether or not the campaign signs posted by Unite were posted within the required 24 hour waiting after approval. This question is answered in the affirmative. The Court finds the signs were placed before the waiting period had expired.

Evidence was entered at trial by Walker showing signs placed in three locations in the daytime. Unite objected as to hearsay, stating there was no way to verify the date and time at which the pictures were taken, also that the pictures were in fact an out of court statement offered for the truth of the matter asserted, that the signs were placed at a time before the 24 hour window had expired. While the Court agreed, at trial, there was no verification of the time and date which the photos were taken at, it nonetheless admitted the photos since there was testimony by Walker the photos were known to him, were an aid to his testimony, and were fair and accurate representations of the signs at the time he observed them. Again we reiterate the rules of evidence, both Florida and Federal, are not binding but persuasive. The evidence and testimony was entered not according to those rules, but to allow for a full and complete factual record to be complied, for any possible appeal. We find no reason to believe Walker is acting in bad faith as it relates to the photos attached to his complain, and entered as Plaintiff's Exhibits A though I.

Additionally entered were the Supervisor's spreadsheet of item approval, and the Qualtrics form to have items approved. Again for the reasons stated above, Unite's objections were overruled and the evidence entered. Walker claims these support his claim the signs were placed early, by showing the time which they were approved. Additionally, the Qualtrics form is what he grounds his argument to defeat Unite's affirmative defense in. He claims that the Qualtircs form states the 714.1(A) time restriction, and argues that even if the definition of "Campaign Materials" was struck by this Court as unconstitutional in

prior holdings, Unite was still on notice that their signs were materials used for campaigning, and still subject to the constraints, since section 714.1(A) was not previously struck down. *See Ney v. Untie* [sic] *Party*, Fla. St. Univ. Rep. (2018) (Section 701(E), SBS found unconstitutional as an improper restriction on political speech).

Based on the evidence and testimony entered into the record, we find that the signs were placed before the 24 hour waiting period had expired, and therefore now must consider the affirmative defense of Reliance, since Walker proved the prima facie case for a 714.1(A) violation.

II

Generally to prove reliance one must show: (1) there was a representation made as to a material fact meant for the benefit of those the representation was made to, (2) the representation was contrary to an accurate understanding, (3) there was reliance on the representation, and (4) there was a harm suffered by the representation and reliance thereon. *Compare Harris*, *supra*, *with Promissory Estoppel and Third Parties, supra*. We examine the elements in turn.

First, was a representation made by a third party meant for the benefit of both Walker and Unite? We answer this question in the affirmative. Testimony was given by the Supervisor of Elections that at a meeting regarding candidate qualifications, and conduct, which all candidates were required to attend, the Supervisor stated that materials needed to be approved 24 hours before use, but that once a material was approved it could be used immediately after approval. On cross-examination by Walker, the Supervisor was asked if this representation was made at both meetings, and the Supervisor answered that it was. The Supervisor's testimony was challenged, but done so improperly, and was not then disputed in the proper manner. Based on what became undisputed testimony, at least permissively undisputed, the Court finds that the Supervisor represented to both Unite and Walker that the materials could be used immediately after approval.

Second, was the representation contrary to an accurate understanding of the law? The Court answers this question in the affirmative. Section 714.1(A) clearly lays forth a waiting period, with no recognizable exception allowing the Supervisor to waive the provision. There is the contention by Walker that the Supervisor stating the materials must be subject to the 24 hour waiting period defeats the good-faith with which Unite acted, since they knew or should have known the 24 hour waiting period was not subject to alteration by the oral declarations of the Supervisor. That argument cannot stand. At best the two statements create an ambiguity, which time and again has been found to favor the party harmed as a result of the ambiguity. For example, in insurance coverage, two conflicting provisions which create ambiguity will be construed in favor of the insured, not insurer; typically meaning the ambiguity is resolved in a way that favors coverage. *See Washington National Insurance Corporation v. Ruderman*, 117 So. 3d. 943, 945 (Fla. 2013) (certified question of if ambiguity is construed in favor of coverage, in insurance contexts, answered in the affirmative). Here there was a representation made which could be construed two ways. The Supervisor could have been understood to say either the waiting period would be in effect after material approval, or that once approved no waiting period would be needed. The contradiction can be reasonably seen as an ambiguity, and Unite through no fault of their own, understood the representation to mean

the waiting period would not apply, not just for them but for any candidate, including Walker. Walker understood the representation the opposite way, again through no fault of his own. The representation made here, that the 24 hour waiting period need not be followed, was the type which would benefit both parties. This representation, was likely incorrect as to the accurate understanding of the law. While we do not opine as to what the provision specifically means, since the interpretation by the Supervisor was not specifically challenged, we do find that a reading of the plain text of section 714.1(A) would show the statement that the waiting period would not be in effect was facially contrary to the statute's plain text.

Third, did Unite rely on the representation? We answer this question in the affirmative. Having discussed above that Unite placed signs before the waiting period had expired, the question seems rather simple to resolve. Unite relied on the Supervisor's representations, and used approved materials before the statutorily required waiting period had expired.

Fourth, did Unite suffer a harm as a result of the reliance on the Supervisor's representations? We answer this question in the affirmative. This action exists solely because Unite relied on the Supervisor's representations. Unite, as discussed earlier, understood the Supervisor to state that the waiting period need not be abided by once materials were approved. This representation was not meant solely for their benefit, but also the benefit of Walker and all other candidates. The Supervisor testified that she later realized her mistake, and accordingly thought the best remedy would not be to retroactively impose the waiting period, but to allow candidates choosing to not wait the 24 hours to continue to do so, since they understood, from the aforementioned candidate seminar, the waiting period to be waived upon approval of their materials. Whether or not this was a good decision is not for this Court to decide, rather we find that because the Supervisor represented section 714.1(A) as being waived upon approval, Unite acted in good-faith deciding when to post materials, based on that representation.

Having answered all the questions which must be satisfied for the affirmative defense to hold in the affirmative, we find the defense to apply, and Walker's claim to be defeated. This is distinguishable from our decision in our hearing immediately preceding this case because of the Supervisor's representations. This Court in the prior case found Unite violated the Oglesby Union's posting policy. The authority for where and how to post in and around the Union comes from the Oglesby Union itself. There, no representation from the Union was made as to where Unite could post. The only representations came from the Supervisor, who is not in an authoritative position such that she could be reasonably seen as accurately representing the regulations the Union promulgates. Here, the Supervisor of Elections made representations as to the Elections Code found in Chapter 700, SBS. Explicit in the powers of the Supervisor are the ability to "[e]nforce the Elections Code," and "[s]upervise the approval of campaign materials." *See* Sections 703(K), (L), SBS. It is reasonable that the candidates and parties will rely on the representations of the Supervisor as they relate to the Elections Code, since it is her prerogative to enforce the code, and those enforcing a body of law are reasonably expected to know it. Unite reasonably expected that the Supervisor's representations of the material approval process would be accurate. While they relied on those representations to their detriment, their reliance was reasonable, and in the

manner which constitutes an affirmative defense.

CONCLUSION

The Court finds that Unite did in fact post materials before the statutorily required waiting period had lapsed; however, asserting the affirmative defense of Reliance, they must be released from liability, since the Supervisor of Elections had informed all parties the waiting period need not apply once the materials had been approved. While this is contrary to the facial language of section 714.1(A), SBS, the Court finds the reliance by Unite on that statement was a reasonable one, subject to the protections of the defense. The Court also distinguishes this ruling from its previous ruling where Unite was found in violation of Union posting policy, since here the Supervisor of Elections made a representation of the Elections Code, which is within her immediate jurisdiction, unlike the Union's posting policy. The Court finds that based on those representations, Unite was acting in good-faith when posting material before the 24 hour waiting period had expired. However, we do stress the posting was in good-faith, and that misrepresentations of statues and reliance thereon will not always be subject to the protections of this defense. This defense is valid in extremely limited circumstances, and actors may not work around statutes simply by waiting for an authoritative figure within the Student Government Association to misrepresent their meaning.

This Court holds that Unite did in fact violate the provisions of section 714.1(A), requiring a 24 hour waiting period between the approval of materials to be used in campaigning and use of those materials. However, they are relieved of any and all liability based on their affirmative defense of Reliance, since: (1) the Supervisor of Elections made a representation of section 714.1(A), SBS, meant for the benefit of Unite, Walker, and all other candidates, (2) the representation was contrary to a facially accurate understanding of section 714.1(A), SBS, (3) there was reliance on the Supervisor's representation, and (4) Unite suffered a harm by the Supervisor's representation and their reliance thereon. Accordingly, Unite is found not liable for a violation of section 714.1(A), SBS.

It is so ordered.