STEVEN D'AGOSTINO, in his official capacity as the webmaster for the Toms River Chess Club

Appellant / Plaintiff

v.

NICHOLAS CARLSON, in his official capacity as the president of the Toms River Chess Club

Respondent / Defendant

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-1138-24

CIVIL ACTION

SAT BELOW:
Honorable Therese A. Cunningham,
Ocean County Chancery Division,
DOCKET NO. OCN-C-71-24

PRINCIPAL BRIEF

FOR APPELLANT STEVEN D'AGOSTINO

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DATE: Jun 16, 2025

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PRELIMINARY STATEMENT

For the sake of simplicity, Plaintiff-Appellant Steven D'Agostino shall hereinafter refer to himself in the first person.

This Chancery Division case involved a dispute between two (2) elected officials of a social organization, the Toms River Chess Club. (*In 2018 we had obtained status as a non-profit corporation: Toms River Chess Club Inc. However due to oversight in our filing of requisite annual IRS forms, we later lost that non-profit status, which in 2024 we were making efforts to remedy*). The club was controlled by a "board" consisting of six (6) elected officers, where I was elected as the club's webmaster and the defendant was elected as the club's president.

As set forth more fully in the initial complaint, the facts that gave rise to this initial action were that shortly after being elected president in November 2021, the defendant began abusing his position, where he would routinely fail to follow the club's published by-laws, and/or the board's controlling vote, and/or make unauthorized expenditures out of the club's treasury, and then make deliberate misrepresentations about same. The initial complaint only sought declaratory and/or injunctive relief, so as to have the court compel him to follow the club's by-laws and the controlling votes of the board. (In essence, it sought to have the court compel the specific performance of his contractual obligations).

But then due to the defendant's subsequent retaliatory, dishonest, illegal, and nefarious conduct (which I will discuss next), I later filed an amended complaint.

About a month and a half after the initial complaint was filed, the defendant asked to have a conversation with me, at which time he then led me to believe that we had essentially come to a voluntary agreement about the issues.

But then not even a month after that, I was completely blind-sided at the next board meeting where I came under intense verbal attacks for about an hour straight, only then learning that instead of trying to settle this matter amicably, he had commenced this extensive process of retaliation against me. Even after that, he then continued his pattern of retaliation by defaming me to the other members of the club, making unofficial informal changes to the by-laws in secret meetings that I was intentionally and wrongfully kept out of; and then, he took the final step of indefinitely suspending my membership - all without affording me any opportunity to defend myself, nor even allow me to vote as an elected board member on my own membership suspension. And then on top of that, I learned that via an illegal change to the by-laws, he further went and ultimately eliminated the entire board position that I was elected to (i.e. so as to circumvent other by-laws that prevent the removal of an elected officer without a full vote by the general membership).

Unfortunately it seems that from the outset of this case, the trial court judge was of the opinion that courts lack jurisdiction to hear such cases (i.e. solely because a social club is involved). And it seems that no matter what authorities I cited to the contrary, nonetheless the court was dead set against allowing the case to proceed.

PROCEDURAL HISTORY [1]

I filed the complaint in the Chancery Division on Apr 9, 2024. (Pa1)

I had simultaneously requested a filing fee waiver, which was granted the next day on Apr 10, 2024. (Pa6).

On Jun 22, 2024 I was sent a *Rule 1:13-7* dismissal notice by the clerk. (Pa7)

As directed by the Ombudsman, on Jul 17, 2024 I filed an "interim" affidavit of service (i.e. so as to prevent the automatic dismissal while the motion for substituted service was pending). (Pa8)

On that same day of Jul 17, 2024 I also filed my motion for substituted service, which included a certification by me and 2 exhibits. (Pa9)

That motion was returnable on Aug 16, 2024. (Pa21)

Late in the afternoon of Aug 15, 2024 (i.e. the day before the motion hearing), I was contacted by attorney Leo Dubler, who informed me that he was representing the defendant in this matter. He then emailed me an acknowledgment of service, which I immediately filed via on eCourts (indirectly via JEDS). (Pa22).

The next morning at the Aug 16, 2024 motion hearing, I informed the trial court that my motion might have become moot, due to Mr. Dubler's acknowledgment of service, which I had just filed electronically hours earlier. (1T) [1]

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[1] The transcript of the Aug 16, 2024 motion hearing is designated as **1T**. The transcript is of the Oct 25, 2024 motion hearing is designated as **2T**. The transcript of the Nov 1, 2024 motion hearing is designated as **3T**. Note that specific sections of the transcripts will be referred to by these designations, followed by page:line(s) numbers. For example, "2T17:21-23" refers to the Oct 25th transcript on page 17, at lines 21 through 23.

Although the trial court judge had not seen his acknowledgment of service yet (nor had been aware of it), she agreed that my motion had then become moot. (1T)

Three days later, on Aug 19, 2024 the trial court entered its own form of order reflecting same. (Pa23).

However the day before that, on Aug 18, 2024 I had filed an amended complaint. (Pa24)

On Sep 19, 2024 Mr. Dubler filed a 31-page motion to dismiss, which included several certifications, as well as an unpublished opinion about me, as factual exhibits. The return date for the motion was Oct 11, 2024. (Pa36)

The next day on Sep 20, 2024 Mr. Dubler filed a corrected brief, along with a cover letter. (Pa67)

On Sep 30, 2024 I filed a letter requesting an adjournment (2-week extension). (Pa73). Almost a week earlier, I had asked Mr. Dubler for his consent to my adjournment request. (Pa74) But Mr. Dubler never responded to me either way.

Shortly thereafter, a "clerk's control message" appeared in the eCourts docket listing, stating (in essence) that my request was granted. To be exact, the message was: "The motion filed on 09/19/2024 was rescheduled to 10/25/2024. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION DISMISSING COMPLAINT [CHC2024289766]"

On Oct 17, 2024 I filed an initial opposition to the motion, which contained merely an overview of my possible future substantive arguments, given that I could not fully articulate any substantive arguments because of the motion's technical defect in its complete failure to state the purported basis (or bases) for the motion. (Pa75)

On Oct 21, 2024 Mr. Dubler filed a reply brief. (Pa96).

The first part of oral argument was heard on Oct 25, 2024 where at the end of that hearing the trial court allowed me to file a supplemental opposition brief. (2T)

On Oct 29, 2024 I filed an amended opposition to the motion, which properly set forth my substantive arguments, as it reflected the Oct 25, 2024 verbal clarification that the motion was based solely upon a purported failure to state a claim. (Pa114).

The next day on Oct 30, 2024, Mr. Dubler filed a sur-reply brief in response to my amended opposition. (Pa131).

On Nov 1, 2024, the trial court heard additional oral argument on the motion, and in the end granted the motion to dismiss with prejudice (for failure to state a claim). (3T).

That same day, the court entered a signed order reflecting same. (Pa133).

This appeal was timely filed on Dec 11. 2024. (Pa134). *In response to a Feb 21, 2025 deficiency notice, an amended notice of appeal was filed on Mar 17, 2025. (Pa140)*

STATEMENT OF FACTS

At the very outset, during the Aug 16th motion hearing for substituted service, the trial court expressed its pre-formed opinion that it lacked jurisdiction to hear my claims, and as such it was unwilling to even grant me a default judgment. (1T4).

Mr. Dubler's Sep 19th motion failed to state anywhere that it was based upon a failure to state a claim. That is, it did not cite *Rule 4:6-2(e)*, nor any court Rule, nor did it say in any words that it was based upon a failure to state a claim. (Pa36)

Even when Mr. Dubler filed a corrected brief the next day on Sep 20th, nowhere with his submission (a corrected brief along with a cover letter) did he state any basis/bases for his motion. (Pa67)

Further still, the Sep 19th motion included several factual exhibits, such as 4 certifications from potential defense witnesses, as well an unpublished opinion that had nothing to do with controlling law or the standard of review for his motion to dismiss. (Pa39 – Pa66)

As to the latter, it was supplied solely to supported a purported fact (namely, that I was a "frequent filer"). (Pa39)

His letter-brief went on to argue that my complaint was "full of factual inaccuracies", and proceeded to argue how several of my allegations were false, therein pointing to the 4 included certifications from the 4 potential defense witnesses. (Pa39, Pa40)

His amended letter-brief made the exact same arguments. (Pa68 - Pa72)

Thus it was unclear if the motion was one for failure to state a claim, a motion for summary judgment (i.e. given that he raised several issues of fact outside of the pleadings), a motion to dismiss because I was a "frequent filer", a motion based on some combination of the foregoing, or perhaps based on something else altogether.

I expressly pointed out this blatant technical defect within my initial Oct 17, 2024 opposition, and expressly pointed out that my ability to properly make substantive arguments was hindered by this. I also expressly pointed out that the few substantive arguments made therein were only intended as an overview of possible arguments I could make, depending upon what the actual bas(es) of the motion might turn out to be. (See Pa76, n.1 at the bottom of the second page of that letter brief).

It should be noted that although the motion was filed on Sep 19th, Mr. Dubler did not send me a copy of it until almost a week later on Sep 24th. (See Pa74).

The very next day on Sep 25th, I had asked Mr. Dubler for his consent to my 2-week adjournment request. (Pa74)

But he never responded to me either way, so on Sep 30th I filed a letter requesting an adjournment (2-week extension). (Pa73). However, during the Oct 25th motion hearing, the court expressed an incorrect belief that Mr. Dubler had consented to my adjournment request. [2] (2T17:21-23)

[2] Apparently the adjournment either was granted directly by the clerk, or perhaps by an informal instruction to the clerk from the judge – however the distinction was never made clear.

It was clear that the trial court was already prepared to rule against me on Oct 25th, even though I had not made anywhere near my full arguments in opposing a motion for dismissal that was based on a failure to state a claim. (See e.g. 2T13:3-6)

And again when the oral argument was continued on Nov 1st, despite all of the additional authorities I cited that unequivocally supported my position, nonetheless the trial court ignored (and/or did not heed) these authorities, even in particular the binding authority from the NJ Supreme Court, which expressly "overruled" the authorities cited by Mr. Dubler (and which the judge relied upon in dismissing my claims in their entirety). Moreover, the judge took the unusual extra step of dismissing my claims with prejudice, and refused to allow me any opportunity to amend my claims. (3T34:10-16).

Further still, I was not even allowed to bring any monetary claims (e.g. defamation) in the Law Division, as allowed in another concurrent but unrelated Chancery Division case, *D'Agostino v. IONOS*, OCN-C-77-24, where the first judge had denied granting me the injunctive relief I had sought, but had dismissed my claims without prejudice and specifically allowed me to bring a suit in the Law Division against IONOS for its alleged breach of contract. However the initial written order incorrectly stated it was a dismissal with prejudice; and given that the first judge had since retired, the amended order in that case was issued by the same new judge as in this case, allowing me to file suit in the Law Division. (Pa143-147)

ARGUMENTS

1) Standard of review (Raised below: 2T, 3T, Pa115)

As the issues on this appeal involve the trial court's interpretation of law (as to a motion to dismiss for failure to state a claim), the standard of review is de novo.

An appellate court reviews **de novo** the trial court's determination of the motion to dismiss under *Rule 4:6-2(e)*. *Stop & Shop Supermarket Co., LLC v. County of Bergen*, 450 N.J. Super. 286, 290, 162 A.3d 291 (App. Div. 2017). It owes no deference to the trial court's legal conclusions. *Rezem Family Assocs., LP v. Borough of Millstone*, 423 N.J. Super. 103, 114, 30 A.3d 1061 (App. Div. 2011).

Given that the motion was brought solely under *Rule 4:6-2(e)*, our N.J. Supreme Court has made clear that the trial court was required to "assume the facts as asserted by plaintiff are true and give [him] the benefit of all inferences that may be drawn in [his] favor." *Velantzas v. Colgate-Palmolive Co.*, 109 *N.J.* 189, 192, 536 *A.*2d 237 (1988) (citing *Pierce v. Ortho Pharmaceutical Corp.*, 84 N.J. 58, 61 (1980)). Our N.J. Supreme Court further clarified that *Rule 4:6-2(e)* motions to dismiss should be granted in "only the rarest [of] instances." *Lieberman v. Port Auth. of N.Y. & N.J.*, 132 N.J. 76, 79, 622 A.2d 1295 (1993) (quoting *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 772, 563 A.2d 31 (1989)). Trial courts are cautioned to search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.

"Plaintiffs are entitled to every reasonable inference of fact. The examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach". *Printing Mart, supra*, 116 N.J. at 746

2) The trial court erred in dismissing my claims. (Raised below: 3T, Pa75, Pa114)

A) The matter was correctly brought in the Chancery Division, so as to compel specific performance of the defendant's contractual obligations. (Pa114, Pa117)

I brought the initial complaint in an attempt to have the defendant comply with our club's by-laws and board votes, as he agreed he would do. Thus, this was essentially an action to compel specific performance of his contractual obligations.

"The constitution and by-laws of a voluntary association became a part of the contract entered into by a member when he joined such association". *Leeds v Harrison*, 7 N.J. Super. 558 (Ch. Div. 1950) (citing *Walsche v. Sherlock*, 110 *N.J. Eq.* 223, 159 *A.* 661; *Harris v. Geier*, 112 *N.J. Eq.* 99, 164 *A.* 50; *Cameron v. International Alliance, &c., U.S. & Canada*, 119 *N.J. Eq.* 577, 183 *A.* 157; *Gaestel v. Brotherhood of Painters, &c.*, 120 *N.J. Eq.* 358, 185 *A.* 36; *Height v. Democratic Women's Luncheon, &c., Inc.*, 131 *N.J. Eq.* 450, 25 *A.*2d 899).

"The relationship between a social club and its members is one of contract. When courts intervene in the internal affairs of a social club it is only to determine whether the club has violated its own rules." *Garvey v. Seattle Tennis Club*, 808

P.2d 1155, 60 Wash. App. 930. 933-934 (Ct. App. 1991) (affirming the summary judgment only upon factual grounds that were developed after discovery, finding that the club did not violate its own bylaws, where the trial court had denied the defendant's first motion for summary judgment, and later granted the second motion for summary judgment, in the latter therein concluding that: "There being no genuine issue of material fact and the Club having complied with its Bylaws, defendant is entitled to judgment as a matter of law.").

As our N.J. Supreme Court has made clear, "where the principal relief is equitable in nature, the action should be brought in the Chancery Division. R. 4:3-1(a)(1)." *Crowe v. De Gioia*, 90 N.J. 126, 137 (1982) (therein noting that the dissenting judge in *Kozlowski v. Kozlowski*, 80 N.J. 378 (1979) correctly concluded that the matter belonged in the Chancery Division because the complaint, in effect, sought specific performance of a unique kind of agreement).

B) The N.J. Supreme Court explicitly overruled earlier decisions of this state which had previously rejected jurisdiction of the court over social clubs. (Pa127, 3T30)

Mr. Dubler had correctly argued that in *Falcone v. Middlesex Co. Medical Soc.*, 62 N.J. Super. 184 (Law.Div. 1960), affirmed 34 N.J. 582 (1961), the Law Division held that "membership [in fraternal and social organizations] may be increased or decreased at will, without regard to standards, arbitrariness or otherwise, and without judicial interference". However, his argument conveniently

ignored the fact that this premise is essentially no longer good law, as 9 years later this premise was overruled by the N.J. Supreme Court in *Baugh v. Thomas,* 56 N.J. 203 (1970), which therein expressly held that: "**Earlier decisions of this state which reject such jurisdiction are overruled**". *Id.* at 208

C) A court's jurisdiction is not limited to trade or religious associations (3T, Pa116).

Contrary to Mr. Dubler's argument, the N.J. Supreme Court's rulings in *Baugh* were **not** limited to religious organizations - as the *Baugh* Court explicitly held: "**we can see no reason for treating religious organizations differently from other non-profit voluntary associations**". *Baugh v. Thomas,* 56 N.J. at 208 -209:

> Moreover, except in cases involving religious doctrine, **we can see no reason for treating religious organizations differently from other non-profit voluntary associations**. In the context of other voluntary associations, we have held that **there need not be a property right at stake for a court to assume jurisdiction**. The status of membership in a voluntary association is sufficient to warrant at least limited judicial examination of the reason for expulsion. *Higgins v. American Society of Clinical Pathologists,* 51 *N.J.* 191 (1968). Other jurisdictions have extended judicial review to ousters of church members where the actions show a departure from the rules and regulations of the church. See *Taylor v. Jackson,* 50 *U.S. App. D.C.* 381, 273 *F.* 345 (1921); *Walker Memorial Baptist Church v. Saunders,* 285 *N.Y.* 462, 35 *N.E.*2d 42 (1941); *David v. Carter,* 222 *S.W.*2d 900 (Tex. Ct. Civ. App. 1949); *Randolf v. First Baptist Church,* 120 *N.E.*2d 485 (Ohio Ct. C.P. 1954); cases collected in 20 *A.L.R.*2d, *supra* at 462-66. *Cf. Bouldin v. Alexander,* 82 *U.S.* 131 (15 *Wall.*), 21 *L.Ed.* 69 (1872); *Linke v. Church of Jesus Christ of Latter Day Saints,* 71 *Cal. App.*2d 667, 163 *P.*2d 44 (1945). This position was taken in *Hughes v. North Clinton Baptist Church, supra,* 75 *N.J.L.* 167 (Sup. Ct. 1907) which the Appellate Division declined to follow.

And more than 20 years later, the N.J. Supreme Court still upheld this premise in *Elmora Hebrew Center, Inc. v. Fishman,* 125 N.J. 404, 413-414 (1991), therein also citing authority from the U.S. Supreme Court:

However, religious parties or institutions are not thereby the less entitled to civil adjudication of secular legal questions. For example, in *Watson v. Jones, supra,* 80 *U.S. (13 Wall.)* at 714, 20 *L.Ed.* at 670, the United States Supreme Court established the basic tenet that "**[r]eligious organizations come before us in the same attitude as other voluntary associations** for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints." In fact, the civil courts to some degree have a duty to protect state interests in the resolution of disputes over ownership and control of property. *See Jones v. Wolf,* 443 *U.S.* 595, 602, 99 *S.Ct.* 3020, 3025, 61 *L.Ed.*2d 775, 784 (1979) ("The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively" (citing *Presbyterian Church v. Hull Church, supra,* 393 *U.S.* at 445, 89 *S.Ct.* at 604, 21 *L.Ed.*2d at 663)). By analogy, courts have the power, and perhaps a duty as well, to enforce secular contract rights, despite the fact that the contracting parties may base their rights on religious affiliations. For example, in *Jewish Center v. Whale,* 86 *N.J.* 619, 432 *A.*2d 521 (1981), this Court upheld the rescission of a rabbi's employment contract on the basis of the civil principle of fraudulent misrepresentation. Although the parties in *Whale* did not raise the question of a civil court's power to decide their dispute, if, as had happened in that case, a clergyman seeking employment misrepresents his experience to obfuscate a criminal background, the standard secular law of fraud presumably would apply without reference to religious doctrines that may address such untruthfulness.

Thus, courts can and do decide secular legal questions in cases involving some background issues of religious doctrine, so long as the courts do not intrude into the determination of the doctrinal issues.

D) Courts have jurisdiction to redress a member's wrongful expulsion. (3T, Pa116)

As this Court held in *Trautwein v. Harbourt,* 40 N.J. Super. 247, 265-266 (1956):

> Plaintiffs stress the high value which the courts have attached to membership in fraternal societies, clubs and organizations, as evidenced by their readiness to **redress unwarranted expulsion**; and they imply that there should be equal readiness to protect against unwarranted interference with the opportunity for membership therein, just as against unjustified interference with prospective economic advantage. *Cf. Longo v. Reilly,* 35 N.J. Super. 405, 411, 412 (App. Div. 1955). There can be no doubt as to the conspicuous place of social and fraternal organizations in American society, *Abernathy, op. cit. supra (6 S. Car. L.Q., at p. 33),* nor as to the cachet attributed by almost every individual to membership in one or more particular voluntary associations, societies or groups, *Comment, "Protection of Membership in Voluntary Associations," 37 Yale L.J. 368, 372 (1928); Annotation, 20 A.L.R.2d 344, 391.* Professor Chafee has said that in comparison with "such emotional deprivations"

> as loss of membership in club, union, school or church, "mere losses of property often appear trivial," op. cit. supra (*43 Harv. L. Rev., at p. 998*). There is evidence that unwarranted obstruction of or **interference with** normal opportunities for **social intercourse** may be **actionable**. In *Deon v. Kirby Lumber Co.*, 162 La. 671, 111 So. 55, 52 A.L.R. 1023 (Sup. Ct. 1926), it was held that the order of an employer to his employees not to patronize or visit the family of a local storekeeper gave rise to an action for damages. The charge in the complaint encompassed the **malicious injury by the defendant** of **plaintiff's "social standing and character"** and the effectuation of his ostracism. The court said: "The free and unhampered exercise of the right [to enjoy social relations with one's friends and neighbors] is necessary to his happiness, comfort and well-being. If he be unlawfully deprived of that right by others, **he is entitled to redress**." (111 So., at page 58); in accord, *Miller v. Monsen*, 228 Minn. 400, 37 N.W.2d 543, 548, 549 (Sup. Ct. 1949).
>
> We have no difficulty with the theoretical concept, expressed in various ways by modern jurisprudents, that **intentional, willful or malicious harms of any kind are actionable unless justified**. *Prosser, op. cit. supra, § 108, pp. 760, 764, f.n. 36; Note, "The Prima Facie Tort Doctrine," 52 Col. L. Rev. 503 (1952)*; *Cowan, "Torts," 10 Rutgers L. Rev. 115, 122 (1955)*; Mr. Justice Heher, in *Louis Kamm, Inc. v. Flink*, supra (113 N.J.L., at page 588). Nor can there be reasonable quarrel with the general idea that in assaying the range of interests requiring protection the law should recognize the "demand involved in social life in civilized society that all individuals shall have fair or reasonable * * * opportunities — political, physical, cultural, social and economic." *Pound, "A Survey of Social Interests," 57 Harv. L. Rev. 1, 36 (1943)*; and see *Green, "Relational Interests," 29 Ill. L. Rev. 460, 1041 (1934), 30 Ill. L. Rev. 1, 314 (1935)*, passim.

Further, even Mr. Dubler acknowledged in his motion reply brief that the *Baugh* Court had held that "expulsion" from membership "can constitute a serious emotional deprivation" sufficient to warrant judicial protection. In a federal case involving an improper one-year membership suspension, in *Clayton v. Trustees of Princeton University*, 519 F.Supp 802 (1981) the *Baugh* authority was cited and relied upon by the U.S. District court in its finding that:

> Though it may be conceded that the plaintiff in the present case has suffered neither tangible economic loss nor any loss remediable under the traditional contract and property theories, we believe that her membership represented an interest of sufficient value to warrant judicial protection if it has been subjected to an unjust interference. *Id.* at 805

When the New Jersey courts have directly addressed the question of whether **an association must observe its own rules in disciplining a member** the answer has always been yes. A good example of this is *Baugh v. Thomas*, 56 N.J. 203, 265 A.2d 675 (1970). *Ibid.*

As our NJ Supreme Court held in *Rutledge v. Gulian*, 93 N.J. 113, 118-119 (1983):

The rights accorded to members of an association traditionally have been assessed in terms of the property interests in the assets of the organization or in terms of contract rights. 51 *N.J.* at 199. The modern trend, however, sees **the member's valuable personal relationship to the organization as the true basis for judicial relief against wrongful expulsion**. *See generally*, Chafee, "The Internal Affairs of Associations Not for Profit", 43 *Harv.L.Rev.* 993, 1007-10 (1930). The *Higgins* court noted that "[t]he loss of *status* resulting from the destruction of one's relationship to a professional organization oftimes may be more harmful than a loss of property or contractual rights", 51 *N.J.* at 200 (emphasis in the original), and concluded that the status and professional recognition conferred by membership in a professional organization warranted at least a limited judicial examination of the reason for plaintiff's expulsion. Similarly, the court in *Zelenka, supra,* held that expulsion from the order of Elks warranted judicial review in light of the esteem conferred by membership in that fraternity. Although Rutledge's ability to practice his profession did not turn on his Masonic status, nevertheless this status, attributable to membership in a prestigious, socially-active fraternity, merits protection from unreasonable discomfiture.

In *Zelenka v. Benevolent & Protective Order of Elks*, 129 N.J. Super. 379, 382-383 (App.Div. 1974), this Court held:

It is well established in this State as well as elsewhere that the **courts will take jurisdiction to grant a remedy for a wrongful expulsion**, as distinguished from an exclusion, from a voluntary association. *Higgins v. American Society of Clinical Pathologists*, 51 N.J. 191, 199 (1968); and see *Trautwein v. Harbourt*, 40 N.J. Super. 247, 259 (App. Div.), certif. den. 22 N.J. 220 (1956). While American and English courts have traditionally been loath to exercise visitorial powers upon voluntary organizations of a purely private nature, *Chafee, "The Internal Affairs of Associations Not for Profit," 43 Harv. L. Rev. 993 (1930)* passim, particularly those not affecting economic or civic interests, we have nevertheless observed in the *Trautwein* case:

* * * There can be no doubt as to the conspicuous place of **social** and fraternal in American society, *Abernathy, ["The Right of Association", 6 S. Car. L.Q. 32, 33 (1953)]*, nor as to the cachet attributed by almost every individual to membership in one or more particular voluntary associations, societies or groups, *Comment, "Protection of Membership in Voluntary Associations," 37 Yale L.J. 368, 372 (1928); Annotation, 20 A.L.R.2d 344, 391.* Professor Chafee has said that in comparison with **"such emotional deprivations" as loss of membership in club**, union, school or church, "mere losses of property often appear trivial." op. cit. supra *(43 Harv. L. Rev., at p. 998)*. [40 N.J. Super. at 265]

Moreover, that exact same issue was revisited by this Court in *Cipriani Builders, Inc. v. Madden*, 389 N.J. Super. 154 (App.Div. 2006), where this Court reversed the trial court's dismissal of the Plaintiff's wrongful expulsion claim. In *Cipriani*, it was further clarified by this Court:

> Private associations do not have unfettered discretion with respect to their membership decisions. *See Rutledge v. Gulian*, 93 *N.J.* 113, 118-24, 459 *A.*2d 680 (1983); *Higgins v. Am. Soc'y of Clinical Pathologists*, 51 *N.J.* 191, 198-204, 238 *A.*2d 665 (1968); *Falcone v. Middlesex County Med. Soc'y*, 34 *N.J.* 582, 588-98, 170 *A.*2d 791 (1961). When judicial intervention is sought regarding a private association's membership decision, the court must determine whether "plaintiff [has] an interest sufficient to warrant judicial action," and if such an interest is shown, whether "that interest [has] been subjected to an unjustifiable interference by the defendant[.]" *Rutledge, supra*, 93 *N.J.* at 118, 459 *A.*2d 680.
>
> In determining whether a plaintiff has an interest sufficient to warrant judicial intervention, our courts distinguish between an application for membership in a private association and the expulsion of a present member: "While the general rule is that **courts** will not compel admission of an individual into a voluntary association, they **have been willing to intervene and compel the reinstatement of a member who has been wrongfully expelled**[.]" *Higgins, supra*, 51 *N.J.* at 199, 238 *A.*2d 665; *see also Baugh v. Thomas*, 56 *N.J.* 203, 207-09, 265 *A.*2d 675 (1970).
>
> If a plaintiff establishes a sufficient interest in membership in a private association to be entitled to judicial review, a court must determine whether the procedures the association followed in making the membership decision were **fundamentally unfair**. *Rutledge, supra*, 93 *N.J.* at 120, 459 *A.*2d 680. In making this determination, a court will consider whether the association complied with its own internal rules. *Ibid.*; *Baugh, supra*, 56 *N.J.* at 208-10, 265 *A.*2d 675. **If a private association failed to follow its rules** in making a membership decision, a court will "balance the organization's interest in autonomy and its reason for straying from its rules against the magnitude of interference with the member's interest in the organization and the likelihood that the established procedures would safeguard that interest." *Rutledge, supra*, 93 *N.J.* at 123, 459 *A.*2d 680.
>
> This rationale is inconsistent with *Rutledge*, which holds that if an association member has a sufficient interest in membership to warrant judicial protection, the member may be entitled to relief not only if a membership decision **violates public policy** but also if the procedures the association followed in making that decision **were fundamentally unfair**. 93 *N.J.* at 120, 459 *A.*2d 680. Because Cipriani made a sufficient showing that the procedures the NJRA followed in expelling him were fundamentally unfair, the trial court should have denied the NJRA's motion for summary judgment.

In *Higgins v. American Society of Clinical Pathologists*, 51 N.J. 191 (1968), the N.J. Supreme Court held:

> Private associations must have considerable latitude in rule-making in order to accomplish their objectives and their private law generally is binding on those who wish to remain members. However, **courts will relieve against any expulsion based on rules which are in conflict with public policy**. *Hurwitz, supra; State ex rel. Waring v. Georgia Medical Society*, 38 *Ga.* 608, 95 *Am. Dec.* 408 (*Sup. Ct.* 1869); *Bernstein v. Alameda-Contra Costa Medical Ass'n*, 139 *Cal. App.2d* 241, 293 *P.2d* 862 (1956); *Firestone v. First District Dental Society*, 24 *App. Div.2d* 268, 265 *N.Y.S.2d* 525 (1965); *People ex rel. Gray v. The Medical Society of the County of Erie*, 24 *Barb.* 570 (*N.Y. Sup. Ct.* 1857); *Note, 15 Rutgers L. Rev., supra*, at *pp.* 334-335; *Comment*, 5 *Utah L. Rev.* 270, 272 (1957); *Annot.*, 20 *A.L.R.2d, supra*, at *pp.* 546-548. See *Falcone, supra*, at *pp.* 589-590.

As to the definition of what constitutes "public policy", that question was answered in considerable detail by the N.J. Supreme Court, in *Bron v. Weintraub*, 42 N.J. 87, 93-94 (1964) :

> "What is the meaning of 'public policy'? A correct definition, at once concise and comprehensive, of the words 'public policy,' has not yet been formulated by our courts. Indeed, the term is as difficult to define with accuracy as the word 'fraud' or the term 'public welfare.' In substance, it may be said to be the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like. It is that general and well-settled public opinion relating to man's plain, palpable duty to his fellow men, having due regard to all the circumstances of each particular relation and situation.
>
> Sometimes such public policy is declared by Constitution; sometimes by statute; sometimes by judicial decision. More often, however, it abides only in the customs and conventions of the people — in their clear consciousness and conviction of what is naturally and inherently just and right between man and man. It regards the primary principles of equity and justice and is sometimes expressed under the title of social and industrial justice, as it is conceived by our body politic. When a course of conduct is cruel or shocking to the average man's conception of justice, such course of conduct must be held to be obviously contrary to public policy, even though such policy has never been so written in the bond, whether it be Constitution, statute, or decree of court. * * *"
>
> Reflecting as it does the common conscience, public policy changes in its demands with the needs and the widely held feelings of the times. *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 403 (1960). As was said in *Brooks v. Cooper*, 50 N.J. Eq. 761, 769 (E. & A. 1893):
>
> > "It has been declared that public policy is a variable quality, but the principles to be applied have always remained unchanged and unchangeable, and public policy is only variable in so far as the habits, capacities and opportunities of the public have become more varied and complex. The relations of society become from time to time more complex; statutes defining and declaring public and private rights multiply rapidly, and public policy often changes as the laws change, and therefore new applications of old principles are required. *Davies v. Davies*, 36 Ch. Div. 364.

> Whatever tends to injustice or oppression, restraint of liberty, restraint of legal right; whatever tends to the obstruction of justice, a violation of a statute, or the obstruction or perversion of the administration of the law; whatever tends to interfere with or control the administration of the law as to executive, legislative or other official action, whenever embodied in and made the subject of a contract, the contract is against public policy and therefore void and not susceptible of enforcement."

Despite the apparent abstractness of the concept of public policy in its restraint upon individual conduct, there is a large measure of guidance and predictability, for as Professor Corbin points out, men of probity and intelligence can greatly reduce the risk "by an unselfish use of conscience and common sense." *6A Corbin-Contracts § 1374, p. 6 (1962)*. His discussion is worth repeating (at p. 6):

> "There is still another source of `illegality,' besides statute and judicial decision. That source is the great common background of life from which come both legislation and common law. It is the prevailing practices of the community of people and their notions as to what makes for the general welfare. Bargains are judged by the folkways and mores of the time. A bargain may be illegal because it is contrary to `Public Policy,' as that is understood by the judges and administrative officers.
>
> A man of business can not escape feelings of uncertainty if the legality of his bargains is to be determined in this fashion. How can these officials know `public policy,' a matter as to which there is often such violent disagreement? And how can a layman determine what the officials will decide? Here, again, however, we shall advise that a man of probity and intelligence can avoid excessive risk without materially nullifying his enterprise. In most of his transactions the question of legality does not in fact arise. In most of those in which it does arise, the public policies involved have already been declared by statute or judicial decision. In the number remaining, some of which may be very important indeed, he knows that he will be judged by the practices and opinions of his fellow men, practices and opinions in the midst of which he was born and by which his own mind and conscience have been formed and educated. For a man of probity and intelligence, the risk involved in making a decision and acting on it need not be very great. But `probity' varies in degree, and intelligence may be lacking. Many men have believed that they were unjustly penalized for action wholly consistent with the public welfare. It is true that lack of probity and a minimum of intelligence may be found in the officials who decide as well as in the man who bargains. That is a risk that we can not wholly avoid, even in a democratic society. The best advice that can be given in this small residuum of cases is that risk of illegality can be avoided only by leaning over backwards and deciding against one's own interest. The bold and resolute may fight and win, but they should be prepared to take the medicine if they lose."

So my right to judicial relief is well established via a plethora of authorities from this state, as well as from other states and even federal courts. As to the latter, I ask this Court to also consider just a few examples of many other authorities, where other courts have similarly held. For example, consider just these 4 cases:

Kendrick v ***Watermill Beach Club***, 8 Misc 2d 798, 165 NYS2d 1009 (N.Y. Supreme Court 1957):

> **The court will intervene** and scrutinize the procedure taken in private corporate affairs **where found to be violative of the procedure prescribed by the by-laws**, particularly in corporate actions entailing suspension of membership with the resultant forfeiture of privileges. Scrutiny of the procedure followed by respondent leads the court to the conclusion that the notice relied upon was neither in keeping with the stated provisions or spirit of the by-laws and in consequence was violative thereof.
>
> The court is not concerned with nor does it pass upon the merits of the ultimate findings of the board. It is concerned with compliance with the by-laws in instituting the procedure and, in finding noncompliance, rules that all subsequent actions were invalid. *Id.* at 802

Lawrence v. ***Ridgewood Country Club***, 635 S.W.2d 665 (Tex: Court of Appeals, 10th Dist 1982):

> The law is well-settled in Texas that a court will not **intervene** in the internal management and disciplinary processes of a private club unless **the club violates its own rules and procedures**. (citing *Manning v. The San Antonio Club*, 63 Tex. 166, 169 (1884))

Lowery v. International Boilermakers, 130 So. 2d 831, 241 Miss. 458, 472-473 (1961).

> This contract with the association is binding on members to pay dues, and upon failure so to do, **suit may be brought on the agreement**. (citing *4 Am. Jur. 465, Associations and Clubs, Sec. 16.*; *Anderson v. Amidon*, 114 Minn. 202, Ann. Cas. 1912B, 987).

As a fourth example, in ***Surf Club*** *v. Long*, 325 So.2d 66 (3rd Dist. Fl 1975), the District Court of Appeal of Florida Third District affirmed the trial court's judgment for the Plaintiffs:

> Defendant, The Surf Club, appeal[ed] a final judgment (1) enjoining the Club and its board of governors from borrowing any money for the purpose of paying operational losses, (2) directing the Club's board of governors to determine and assess the current dues paying members of the Club the amount necessary and sufficient to pay all current operational losses, (3) declaring the plaintiffs as proprietary owners to be joint owners of a prorate share of the property and franchises of the Club and their rights cannot be defeated by any bylaw adopted by the Club, and (4) ordering an accounting of the operations for the year 1974 to the date of the judgment. **Jurisdiction was retained** to grant further relief to protect **the rights and interest of the plaintiffs in** the property and franchises of **the Club**.

Here in this instant matter, I was wrongfully removed from the club without even being afforded a chance to be present at the hearing, which certainly is a violation of my rights that warrant judicial intervention. [3] "A member is entitled to notice of the charges against him, notice of the time and place of the hearing and a full and fair opportunity to be present and to offer a defense". *Gervasi v. Societa Giusippi Garibaldi*, 96 Conn. 50, 57, 112 A. 693 (1921)

However, the trial court judge then just simply side-stepped all of the foregoing authorities, by making a factual finding that even if she were to rule in my favor that the termination of my membership was wrongful, and even if she were to order that I be reinstated, nonetheless she couldn't declare me to be a permanent member - and therefore she opined that her ruling would not necessarily end the controversy, as the defendant and/or the board could later decide just to terminate my membership again. (3T29:11-25, 3T32:9 – 33:5).

But I respectfully submit that unquestionably this was error, as none of the other plaintiffs in any of those cited authorities needed to be declared permanent members as a prerequisite for those courts to intervene in any of those wrongful expulsions. So if may be candid, I think that this ruling was due to "confirmation bias" with respect to her preformed opinion that the court lacked jurisdiction.

[3] Although the exact language of my removal was phrased as an "indefinite suspension" rather than an "expulsion" (i.e. language which the defendant specifically chose so as to circumvent another by-law which required a vote by all of the club's members to achieve an "expulsion"), the actual effective end result was the same – it caused a permanent removal of my membership.

E) Courts have jurisdiction over a club when its officer acts in bad faith (3T, Pa116)

The defendant's repeated bad faith gives rise to valid equitable causes of action. For example, as the Chancery Division of this state held over 45 years ago in *Papalexiou v. Tower West Condominium*, 167 N.J. Super. 516 (Ch.Div. 1979):

> **This rule requires the presence of fraud or lack of good faith in the conduct of a corporation's internal affairs before the decisions of a board of directors can be questioned**. *Shlensky v. Wrigley*, 95 *Ill. App.*2d 173, 178, 237 *N.E.*2d 776, 779-780 (App. Ct. 1968). If the corporate directors' conduct is authorized, a **showing must be made of fraud, self-dealing or unconscionable conduct to justify judicial review.** This presents an issue of law rather than of fact. *Penn-Texas Corp. v. Niles-Bement-Pond Co.*, 34 *N.J. Super.* 373, 378 (Ch. Div. 1955). Although directors of a corporation have a fiduciary relationship to the shareholders, they are not expected to be incapable of error. All that is **required is that persons in such positions act reasonably and in good faith in carrying out their duties**. *Daloisio v. Peninsula Land Co.*, 43 *N.J. Super.* 79, 89-90 (App. Div. 1957); *Casson v. Bosman*, 137 *N.J. Eq.* 532, 535 (E. & A. 1946). Courts will not second-guess the actions of directors **unless it appears that they are the result of fraud, dishonesty or incompetence**. *Sarner v. Sarner*, 62 *N.J. Super.* 41, 60 (App. Div. 1960). [Emphasis added]

Courts in other jurisdictions have similarly held. For example consider these cases:

*Smooth Ashlar **Grand Lodge** v. Odom*, 222 S.E.2d 614, 136 Ga. App. 812 (1975):

> Appellant Grand Lodge is a nonprofit fraternal society, an order of York Masons. It is incorporated under the laws of Georgia and governed by a constitution and by-laws. *Id.* at 813
>
> As was stated in *Golden Star of Honor v. Worrell*, 158 Ga. 309 (1) (123 SE 106): "The general rule is that if a benevolent association confines itself to the powers vested in it, and acts in good faith under by-laws adopted by it, and does not violate the laws of the land or any pecuniary or property right of the member of the association, the courts have no authority to interfere with the society by directing or controlling it as to questions of internal policy, but will leave the society free to carry out any lawful purpose in accordance with its rules and regulations. [Cits.]" *Odom.* at 815
>
> We reiterate that a benevolent **association must act in good faith and in accordance with its own constitution and by-laws if it wishes to insulate itself from external judicial regulation**. *Golden Star of Honor v. Worrell*, supra; *Hornady v. Goodman*, supra. *Odom.* at 817

Angland v. Doe, 105 U.S.App.D.C. 16, 18, 263 F.2d 266, 268 (US Court of Appeals D.C.Cir. 1958):

> This jurisdiction long since recognized that **courts may not interfere unless a determination by the club**'s constitutional authorities **is** ultra vires, fraudulent, or **made contrary to good faith**.

In *NAACP Ass'n v. Golding*, 342 Md. 663, 679 A.2d 554, 560 (1996), the Court of Appeals of Maryland summarized various principles which have been applied by the courts to support judicial intervention in cases pertaining to an unincorporated private voluntary membership association. Intervention may occur where: (1) "property rights or a pecuniary interest is at stake;" (2) "economic necessity" exists; (3) "either property rights or civil rights are at stake;" (4) contractual rights are implicated; (5) "officers [of the association] acted fraudulently or in bad faith;" (6) the association has breached its fiduciary duty to its members; (7) "the seriousness of the injury to the individual [outweighs] the association's interest in autonomy and freedom from judicial oversight."

Some courts focused on the fifth category of intervention, listed above, and relied on concepts of fraud, bad or good faith, and fairness. In *U.S. ex rel. De Yturbide v. Metropolitan Club*, 11 App.D.C. 180, 201 (1897), the court stated that in the presence of: "fraud or bad faith or want of fairness on the part of the board of governors in passing [a] resolution of expulsion," the courts will intervene in the affairs of a social club or corporate entity. In *Berrien v. Pollitzer*, 83 U.S.App.D.C. 23, 25, 165 F.2d 21, 23 (1947), a case involving the exclusion of a woman from the

National Women's Party, the court focused on the concept of a "judgment arrived at [ ] in good faith."

While other courts, such as in *Marjorie Webster Junior College, Inc. v. Middle States Ass'n of Colleges & Secondary Sch., Inc.*, 139 U.S.App.D.C. 217, 432 F.2d 650 (D.C.Cir.1969), appeared to emphasize the second and seventh categories of intervention concerning a private professional association, determining that judicial intervention "must be related to the necessity for intervention," and that: "[T]he extent to which deference is due to the professional judgment of the association will vary both with the subject matter at issue and with the degree of harm resulting from the association's action." *Id.* at 655-56 (footnotes omitted).

For other cases, see *Anderson v. Enterprise Lodge No. 2, Independent Order of Odd Fellows*, 80 Wash.App. 41, 906 P.2d 962, 966 (1995) ("[D]isputes [which] are judicially cognizable" include those "(1) involving property rights of members . . ., and (2) involving whether the organization's proceedings were regular, in good faith, and not in violation of the laws of the order or the laws of the state."); *Putka v. First Catholic Slovak Union of the United States and Canada*, 75 Ohio App.3d 741, 600 N.E.2d 797, 802 (1991) ("In the absence of mistake, fraud or management activity in excess of its corporate powers, a decision by [a voluntary] association in accord with its own charter and rules made by the governing body must be accepted by courts of law."); *Moran v. Vincent, Worthy Grand Matron of*

the Grand Chapter of the Order of the Eastern Star, 588 S.W.2d 867, 870 (Tenn. Ct.App.1979) (even where no property rights are affected by an expulsion from membership, "courts may intervene where the procedures of the [organization] were not followed or where its officers acted in an arbitrary, oppressive, or unlawful manner").

F) The defendant cannot unilaterally and retroactively change by-laws (3T, Pa116)

In response to my initial complaint (that was filed in response to the defendant's numerous breaches of several terms within our club's by-laws), he then attempted to unilaterally and retroactively change those by-laws, so as to make his own prior nefarious conduct allowable now, and/or to remove my voice as a whistle-blowing elected officer of the club. But he cannot be allowed to succeed in this attempt.

This premise should be axiomatic; however for completeness sake I will briefly address it herein.

For starters, just as with any contract in general, no single party can unilaterally change the terms of a contract, especially if that party wants the changes to apply retroactively.

For a hypothetical example, let's say that "party A" had a 5-year contract with "party B" to perform a certain service, for a fixed sum of money each year. But then on year 3, one party wanted to change the terms. In that scenario, they would both have to agree, even if the change would be prospective (let alone retroactive).

And more specifically to the point here in this case, the Court should enforce the by-laws as they existed at the time this suit was commenced (i.e. not the nefarious and malicious change to the by-laws that the defendant had deliberately made behind my back after the fact, which he put forth solely in an attempt to deprive me of a voice). In clear violation of our by-laws, he illegally deprived me of any chance to even see this proposed new change, let alone voice my opinion on it, let alone vote on it. As the Chancery Court held in *Penn-Texas Corp. v. Niles-Bement-Pond*, 34 N.J. Super. 373 (Ch.Div. 1955):

> It is fundamental that the corporate structure must be established and managed in conformity with the provisions of the Corporation Act. A by-law or **an amendment to a by-law which is repugnant to any part of our Corporation Act is illegal and void. No citation of authority is needed to support this basic principle.** Granted, therefore, the unquestioned power of the board of directors of the defendant, generally speaking, to amend the by-laws, I conclude that the board has no power to change or postpone the date of the annual meeting of stockholders.

"The general rule established long ago is that a corporation is **prohibited from amending its by-laws so as to impair a member's contractual right.**" *Surf Club v. Long*, 325 So.2d 66, 69 (3rd Dist.Fl 1975) (citing *Grand Lodge Knights of Pythias of North America, etc. v. Harris*, 124 Fla. 1, 167 So. 814 (1936); *Brotherhood's Relief and Compensation Fund v. Cagnina*, Fla.App. 1963, 155 So.2d 820). Likewise in *Sterner v. Saugatuck Harbor Yacht Club, Inc. 188 Conn. 531 (1982)*, the Connecticut Supreme Court instructed that courts should consider the common-law standards of fair play and the reasonableness of the club's bylaws. *Id.* at 535.

3) The court erred in dismissing all of my claims with prejudice. (3T, Pa74, Pa116)

Even momentarily setting aside all of the foregoing errors, at the very least the dismissal should have been without prejudice as to my potential monetary claims in the Law Division, which were mentioned in my amended complaint (see e.g. ¶77, Pa 35). And clearly this judge was aware of this, as she was the same judge who granted the amended order in my other Chancery Division case, *D'Agostino v. IONOS*, OCN-C-77-24, which specifically allowed me to bring a suit in the Law Division against IONOS for its alleged breach of contract. [4]

So it boggles my mind, not only as to why there was any dismissal at all, but further as to why it was with prejudice, especially at least with respect to a Law Division suit so as to seek monetary damages for the defendant's "defamation and infliction of emotional distress", as I had alleged within my amended complaint.

[4] In my other Chancery Division case, *D'Agostino v. IONOS* OCN-C-77-24, the first judge was the Honorable Mark A. Troncone, whom during oral argument on IONOS' motion to dismiss, had granted the motion in part by denying my ability to proceed on my claims for the injunctive relief that I had sought, but in doing so he had dismissed my claims without prejudice and specifically allowed me to bring a suit in the Law Division against IONOS for its alleged breach of contract. However he did not issue the written order until 3 weeks later, which then incorrectly stated that it was a dismissal with prejudice. I then filed a timely motion for reconsideration; however he had retired just prior to the motion's return date of Aug 2, 2024, which was then adjourned for 2 weeks so as to allow time for the new judge, the Honorable Therese A. Cunningham, to have an opportunity to get up to speed on the docket that she inherited from Judge Troncone. The oral argument on that motion was heard on Aug 16, 2024, which was the same date as my motion for substituted service in this case. In fact, she had heard that motion in the IONOS matter immediately before hearing my motion in this matter, which may explain to this Court her statement to me: "I'm gonna have to swear you in again". (1T3:7). At the IONOS hearing, she recognized that the initial written order did not match Judge Troncone's verbal rulings, in that it had incorrectly stated that it was a dismissal with prejudice. So even though the majority of the IONOS motion for reconsideration was denied, nonetheless it was granted with respect to an amended order of without prejudice in that case, which then allowed me to file suit in the Law Division to pursue a monetary claim for IONOS' breach of contract. (Pa143-147)

I also raised the issues of my damages in both of my opposition briefs to the motion to dismiss. For example, see Pa77, where within my initial brief I wrote:

> "As soon as I filed the instant matter, he then maliciously engaged in a long course of planned intentional conduct so as to retaliate against me and silence me. For example, he has since taken away all of rights and property with the club, he defamed me and disparaged me in the eyes of the other members, he destroyed my goodwill in the club, he took away (or tried to) my ability to function as the club's webmaster, he took away my ability to host club events that I had personally secured for the club, he unfairly ended my club membership, he deprived me of having any vote (either as board member or even just as a regular member) in any of his nefarious acts, including a change to the by-laws (which I only learned about a couple weeks ago from his counsel, that the change of the by-laws, that he kept hidden from me, was to remove the position of webmaster from the club's board), he unfairly influenced votes, etc., etc. He also terminated my membership in the club; and on top of that, "strongly asked" me not to even attend any club meetings or events (not even just as a visitor, which is open to the general public).
>
> He did all of this vindictively; to retaliate against me for filing this complaint, and also so as to silence my whistle blower efforts (which were all simply aimed at having him comply with the club's by-laws and rules, and to simply respect the board vote, even when it didn't go his way).
>
> And contrary to his arguments, the truth is: A) I have been personally injured by Nick's action; B) I have also been injured in my official capacity of webmaster by Nick's actions; and C) the entire club membership (for which I am an elected representative of) have been injured by Nick's actions."

And if somehow that was not clear enough, see also Pa80, where I explicitly wrote:

> " ... I have suffered damages from the defendant's unconscionable conduct ..."

The above was repeated again in my amended opposition to the motion. For example, see Pa 116, where within my amended brief I even further added:

> "Nick did all of this vindictively; to retaliate against me for filing this complaint, and also so as to silence my whistle blower efforts (which were all simply aimed at having him comply with the club's by-laws and rules, and to simply respect the board vote, even when it didn't go his way). This has caused me great emotional distress and has taken time away from a number of other things that I need to get done (including other cases, which in turn is impacting my ability to recover money owed)."

And:

> "Thus, I have suffered significant and extensive emotional distress, as well as pecuniary damages".

CONCLUSION

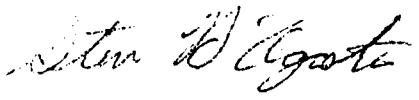
The equitable claims should not have been dismissed at all. Tellingly, the trial court failed to state any reason why: A) the defendant's misappropriation of the club's treasury funds was not actionable; nor B) why the defendant could not be compelled to follow the club's bylaws, our board votes, nor even his own published tournament rules (i.e. where we host contests with paid entry fees that offer monetary prizes to the winners). Instead she focused on the more minor issues, such as my wanting a public apology from the defendant, to at most his removal from his elected position because of his "character" (i.e. but not because of any of his repeated reprehensible conduct). But even assuming if some of my pleadings were deficient (e.g. not naming the other board members as additional defendants), such defect(s) easily could have been rectified via an amended complaint, which the court was required to liberally allow me leave to amend.

However, the court ruled that because she could not declare me to be a permanent member, the board could therefore decide to remove me again - and as a result, deemed that amending my claims would be futile. But that rationale simply does not hold water – given that all of the other courts, involved in the numerous authorities I cited, had all faced the exact same "obstacle", yet the fact of their not being able to declare their plaintiffs as a "permanent member" did not prevent any of them from remedying the member's wrongful expulsion / suspension / removal.

Lastly, at a minimum, any dismissal should have been entered without prejudice as to my filing of monetary claims in the Law Division for the defendant's tortious conduct, as well as his breaches of contract. This would have been consistent with this same judge's ruling in my unrelated but case concurrent Chancery Division case cited above, where in that case my claims for injunctive relief were dismissed with prejudice, but without prejudice to my pursuit of monetary claims in the Law Division (if I should choose to do so). Thus at a minimum, the judge should have allowed me to do the same in this case as she did in the other case. However it appears that this judge inexplicably failed to follow her own precedent in such cases, where here she instead dismissed all of my claims against this defendant with prejudice.

Thus based upon the foregoing, I respectfully submit that several of the trial court's rulings in this case were rendered in error. Thank you.

Respectfully submitted,



Steven D'Agostino

STEVEN D'AGOSTINO,

Plaintiff/Appellant

v.

NICHOLAS CARLSON, PRESIDENT OF THE TOMS RIVER CHESS CLUB,

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1138-24

CIVIL ACTION

On Appeal of Trial Court's November 1, 2024 Decision

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY
CHANCERY DIVISION,
SMALL CLAIMS SECTION
DOCKET NO. OCN-C-0071-24

Honorable Therese A. Cunningham, P.J. Ch.P
Sat below

BRIEF ON BEHALF OF DEFENDANT/RESPONDENT NICHOLAS CARLSON, PRESIDENT OF THE TOMS RIVER CHESS CLUB

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DEFENDANT/RESPONDENT
NICHOLAS CARLSON,
PRESIDENT OF THE TOMS
RIVER CHESS CLUB
Date Submitted: July 16, 2025

LEO B. DUBLER, III, ESQUIRE (Attorney I.D. #:030071993)

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PRELIMINARY STATEMENT

Plaintiff/Petitioner Steven D'Agostino ("D'Agostino") filed suit against Nicholas Carlson ("Carlson") the President of the Toms River Chess Club ("Chess Club") because of a host of perceived slights and alleged wrongdoing. But a careful reading of the long, rambling complaint, shows he did not make a valid claim. The complaint was properly dismissed with prejudice because D'Agostino did not lay out a cause of action and any amendment would be futile.

The law in New Jersey is clear:

> "Private organizations…are entitled to the utmost latitude in their regulation and management of internal affairs." Danese v. Ginesi, 280 N.J. Super. 17, 25 (App. Div. 1995).

That means:

> "Associations… have the right, as a matter of law, to elect and select their membership, and that 'membership may be increased or decreased at will, without regard to standards, arbitrariness or otherwise, and without judicial interference.'" Id. at 25.

However, D'Agostino acts like he's the ultimate authority on what the Chess Club can and cannot do. And some of his edicts make no sense. For example, he decided board members cannot discuss any club business outside

of an official board meeting. Pa31 at paragraph 42. D'Agostino cries foul that Carlson told board members "how stressed out he was over" the lawsuit. Pa39 at 30. D'Agostino also claims harm because Carlson emailed the membership about D'Agostino's lawsuit. Pa28 at paragraph 39. D'Agostino claims that because Carlson and another board member Vinnie, sometimes go to a diner together after board meetings, they are involved in a nefarious plot against him. In D'Agostino's own words:

> "Thus, Nick and Vinnie always act in alliance (some might say in cahoots) with each other." Pa31 at 44.

Courts will get involved with private organizations in limited circumstances. Generally, there are two such times. One is when the case involves a professional organization because that could impact a person's livelihood. The other time when courts will get involved in a membership dispute with a private organization is if it involves someone's religion because of how important people's faith is to them.

However, the Chess Club is a social club. People meet to play chess. The Chess Club sometimes runs tournaments. It's not a professional organization. It's not a religious organization.

D'Agostino repeatedly ignores this fact. He cites to cases involving professional organizations and religious organizations. He takes language out

of context to try to support his position that the court should get involved with his dispute with this social club. As will be detailed in the legal argument section, he repeatedly and cleverly takes cherry picked language from those cases out of context to try to make his point.

D'Agostino is a serial filer of frivolous lawsuits. He knows how to file cases, make motions for reconsideration and appeal to get his pound of flesh. He abuses the court system. See D'Agostino v Domino's Pizza, civil action No. 3:17-cv-11603 (D.N.J. 2024) noting that D'Agostino is a "frequent filer" of complaints in state and federal courts and noting that this was a reason to impeach his credibility. See also In re J& J Pizza, Inc., 2021 Bankr. LEXIS 2241, at page 5 (Bankr. D.N.J. 2021) where a certification was filed detailing the dozens of cases that D'Agostino had filed up until that point (ECF No. 118).

STATEMENT OF FACTS

The Chess Club is a nonprofit social organization where people meet to play friendly, casual chess games. The Chess Club also runs periodic chess tournaments and holds occasional social events like holiday parties. Members pay a small amount of dues for the right to play in chess tournaments and attend club events.

The Chess Club is run by volunteers. They donate their time to run the

Chess Club. Defendant/Respondent Nicholas Carlson ("Carlson") is a longtime member who became the Chess Club's President in 2021 and he's still the President today. Pa24 at paragraph 4.

Carlson "is very popular with the membership, and it is undeniable that he does certain things very well." Pa27 at paragraph 21. Carlson's "technical skills at running the club are very good.." Pa34 at paragraph 69.

Plaintiff/Appellant Steven D'Agostino ("D'Agostino") is a past webmaster of the Chess Club. Pa24-35.

D'Agostino is waging a personal vendetta against Carlson. It could be because he was not able to make a presentation at an event honoring another member. Pa28 at paragraph 24, Pa61 at paragraphs 9-17, paragraphs 9-13 and Pa 50-51 at paragraphs 7-11 Maybe it's because he blames Carlson for a chess tournament where D'Agostino did not do well "resulting in [his] unfairly losing USCF rating points." Pa26 at paragraph 13.

Regardless of D'Agostino's motivation, the amended complaint makes clear, D'Agostino's personal animosity towards Carlson. For example, D'Agostino refers to Carlson as:

"This two-faced SOB" Pa31 at paragraph 41.

"So this was something else Nick lied about" Pa32 at paragraph 48.

"The total illegality of Nick's actions." Pa 34 at paragraph 64.

"Just as politicians do in banana republics, Nick likewise wants to eliminate any possible threat to his totalitarian regime." Pa 34 at paragraph 67. "Nick's…repeated deceit, his repeated manipulative behavior, and his repeated vindictiveness, prove that he does not have the correct character to hold the position of president of the Toms River Chess Club." Pa34 at paragraph 69.

D'Agostino claims he knows the Chess Club's insurance policy does not cover "any non-monetary claims." Pa29 at 31. D'Agostino doesn't want Carlson to "get rewarded for his wrongful conduct by getting a free defense." Pa 29 at 31.

In addition to seeking Carlson's removal as President and "immediately and permanently expel[ling] [Carlson] from the Toms River Chess Club", D'Agostino sought to have Carlson "pay restitution." Pa 35 at paragraph 75. In addition to restitution, D' Agostino's amended complaint demanded that "This restitution must be paid from Mr. Carlson's own personal funds, and not from the club's treasury nor from the club's insurance policy." Pa 35.

D'Agostino's amended complaint said he planned on filing "a Law Division case against Mr. Carlson personally for his defamation and infliction of emotional distress upon Plaintiff." D'Agostino's amended complaint went

on to demand that "If Plaintiff should bring such a lawsuit, Mr. Carlson shall not be able to obtain coverage or a defense under the club's insurance policy." Pa35 at paragraph 77.

The amended complaint is admittedly very long, but it's simply a list of perceived slights to D'Agostino. For example, D'Agostino is apparently claiming emotional harm because after he sued Carlson, Carlson told Chess Club members D'Agostino "was being the villain and [Carlson] was the victim." Pa38 at 29.

D'Agostino sought to force strange requirements on the chess club. For example, he thinks if two or three board members go out to eat after a board meeting they cannot discuss any club business whatsoever. Pa31 at paragraph 42. D'Agostino apparently had his feelings hurt because Carlson allegedly told him that this request "was creepy." Id. D'Agostino is upset that Carlson told people D'Agostino wanted him "to sign an admission of liability" when in fact, it was simply "an acknowledgment of service." Pa32 at paragraph 48.

D'Agostino sent Chess Club members a video explaining why he filed the lawsuit. He's apparently upset because members "largely ignored" his video. D'Agostino blames Carlson for people not wanting to watch his video. Pa28-29 at paragraph 29.

LEGAL ARGUMENT

I. Standard of Review

With regard to the motion to dismiss standard, the Plaintiff cites to Printing Mar-Morristown v. Sharp Elec., 116 N.J. 739 (1989). D'Agostino argues under that case, he should have been allowed to amend his amended complaint. However, an amendment should not be allowed if the amendment is going to be futile. As the New Jersey Supreme Court said in Notte v. Merchants Mut. Ins. Co., 185 N.J. 490, 501 (2006):

> "However, the analysis is not complete until the requested amendment is examined to determine whether it is futile, that is, whether the amended claim will nonetheless fail and, hence, allowing the amendment would be a useless endeavor."

D'Agostino's wide ranging, rambling amended complaint alleging multiple perceived slights against him was properly dismissed with prejudice. D'Agostino laid out all of the facts that he alleged occurred over a period of months. Those facts, no matter how he tries to twist them, cannot support a proper complaint in this case.

II. The Plaintiff Has No Contractual Basis To Seek Judicial Intervention Into This Social Club

D'Agostino's first argument is that his membership in a social club gives him contractual rights and that the Court was compelled to intervene and enforce his contractual rights. To support this position D'Agostino cites to the 1950 case Leeds v. Harrison, 7 N.J. Super. 558 (Ch. Div. 1950). He also cites to an out of state case, Garvey v. Seattle Tennis Club, 808 P.2d 1115 (Ct. App. 1991).

However, the New Jersey Supreme Court not only overruled the Chancery Division in Leeds v. Harrison, 9 N.J. 202 (1952) but also directed that the Plaintiff's complaint in Leeds be dismissed: "The judgment is reversed; and the cause is remanded with the direction to dismiss the complaint." Id. at 218. The Court did that because the Defendant was held to be "essentially a voluntary private...institution." Id. at 217.

The Plaintiff knew the 1950 Leeds Chancery Division case was overruled by the New Jersey Supreme Court because I pointed it out in my October 21, 2024 letter brief to the trial court. That brief is part of the Plaintiff's appendix. Pa96-101 (and Leeds is discussed at Pa97).

The Plaintiff ignores the Supreme Court's decision in Leeds because it lays out the standard for Court's involvement in private associations that the

Plaintiff cannot meet with the facts of this case. The New Jersey Supreme Court in Leeds held:

> "Generally, judicial intervention is justifiable only where the complaining parties suffered an invasion of their civil rights, of person or of property." Id. at 215.

Further, the proposition D'Agostino cites to in the 1950 Leeds case is not the law anymore on this point. The New Jersey Supreme Court in Rutledge v. Gulian, 93 N.J. 113, 123 (1983) stated:

> "The theory that the rules constitute a contract between the member and the organization has fallen into disrepute." citing, Higgins v. American Society American Pathologists, 51 N.J. 191, 200 (1968).

Did D'Agostino not know about these cases? The answer is D'Agostino undeniably knew about these cases because he cited both of them multiple times in his brief. Pb12, 15-16. Throughout his brief, he cherry picks language and then he ignores holdings that go against him. D'Agostino tries to argue a Washington State case when there are New Jersey Supreme Court cases on point.

III. New Jersey Courts Have Not Asserted Jurisdiction Over Social Clubs as Plaintiff Claims

D'Agostino cites to Baugh v. Thomas, 56 N.J. 203, 208 (1970) and claims it supports the proposition that social organizations are not free to increase or decrease their membership as they see fit. He quotes this portion of the Baugh case:

"Earlier decisions of this state which reject such jurisdiction are overruled."

However, the New Jersey Supreme Court was talking about religious organizations expelling members. They were not talking about social clubs. Specifically, the Baugh Court stated:

> "We cannot, however, accept the proposition that civil courts lack jurisdiction to determine whether established procedures of a **religious organization**, as proved, have been followed where a member is expelled from that organization. Earlier decisions of this state which reject such jurisdiction are overruled." Id. (emphasis added).

The law for social and fraternal organizations is:

> "It is well settled that in this . . .class of organizations membership may be increased or decreased at will, without regard to standards, arbitrariness or otherwise, and without judicial interference."

Falcone v. Middlesex County Med. Society, 62 N.J. Super. 184, 199 (Law Div. 1960), affirmed, 34 N.J. 582 (1961).

The law in New Jersey is clear:

> "Deference has always been afforded to the internal decisioning process of private associations."

Loigman v Trombadore, 226 N.J. Super. 437, 449 (App.Div. 1988).

In Passero v North Jersey Country Club, 2014 N.J. Super. Unpub. LEXIS 1280 at page 19, the Appellate Division held:

> "We are dealing with a country club, a private association, and neither the nature of the association nor the dispute involved in this case, implicate any public interest or concern. Under these circumstances, courts should be extremely reluctant to interfere with internal disputes."

IV. D'Agostino Appellant Incorrectly Says Social Organizations are Treated the Same as Trade Groups or Religious Organizations

Courts are more likely to get involved in membership disputes involving (1) trade and professional associations and 2) religious groups. Courts are much less likely to get involved in disputes involving social groups. That distinction makes sense. A person's livelihood may be hurt if they are wrongly expelled from a professional group. For example, in Higgins, supra, the Court said judicial intervention was warranted because of the impact the loss of

membership would have on the plaintiff's professional career. The Court noted:

> "Certification of the plaintiff by ASCP [American Society of Clinical Pathologists] conferred upon her the standing of a **competent professional**. Her membership in this **professional society** gave her recognition and status, two important elements of **professional success**." 51 N.J. 191, 201 (emphasis added).

D'Agostino argues that social groups are treated the same as trade/professional and religious groups based on a quote from Baugh at 56 N.J. 208-209. Pb12. The Baugh Court was not saying all voluntary organizations, including social clubs, are treated the same way. The Court was saying, the *same analysis* applies to membership disputes. That's why the Court cited to Higgins.

> "Thus the Court is faced with only two issues: (1) Whether there exists any basis for judicial intervention in this intra-organizational dispute -- that is, whether plaintiff has an interest sufficient to warrant judicial action; and (2) whether, if such an interest exists, it has been subjected to an unjustifiable interference by the defendant." Higgins, 51 N.J. 191, 198.

The Baugh Court was saying "except in cases involving religious doctrine" the analysis in Higgins applies to religious groups. 58 N.J. at 208.

The Baugh Court ruled that with religious groups, as to the first question in the Higgins analysis (is there a basis for judicial intervention), the answer is yes. Specifically, the Baugh Court said:

> "We believe that expulsion from a church or other religious organization can constitute a serious emotional deprivation which, when compared to some losses of property or contract rights, can be far more damaging to an individual. The loss of the opportunity to worship in familiar surroundings is a valuable right which deserves the protection of the law where no constitutional barrier exists." Id.

V. Plaintiff's "Wrongful Expulsion" Argument is Misplaced and It Fails

D'Agostino devotes a large section of his brief arguing how the Court should have addressed his "wrongful expulsion." Pb13-20. However, D'Agostino was not "expelled" from the Toms River Chess Club.

D'Agostino was indefinitely suspended. Pa33 at paragraph #57. D'Agostino was suspended "for conduct unbecoming a member." Id.

D'Agostino admitted the Chess Club acted within their rights to suspend him and to suspend him indefinitely. Pa33-34 at #59. In his own words:

> "But here, instead he used a loophole of a suspension rather than expulsion, where our by laws allow a suspension to occur via a board vote, and the bylaws do not

> specify a limit to the length of the suspension." Id.

So, D'Agostino apparently demands 100% fidelity to the rules (as he sees them), unless of course that rule does not work in his favor.

D'Agostino's only argument against the suspension is that the July 25, 2024 meeting was not properly noticed. He claims the Board did not give at least 48 hours of notice for the meeting. Pa33 at paragraph #55. That's not accurate. In fact, the Board set the July 25 meeting date at the Board's June 20, 2024 meeting. Pa51. Further, there were reminders sent to the Chess Club's membership after that. Pa51 at paragraph #12 and Pa54-59. Additionally, D'Agostino was at the June 20, 2024 meeting when the July 25 meeting date was set. Pa32 at #49.

D'Agostino states he was at the Chess Club where the meeting was held on July 25, 2024! Pa 32 at #51 and 52. They play chess in one room and hold the Board meeting in another room. Pa32 at #53. And D'Agostino saw at least two other Board members (Jim Carter and Nicholas Carlson) arrived that evening. Pa32 at #51 and 52. D'Agostino played chess in one room and did not attend the board meeting in the next room. D'Agostino knew at the June 20, 2024 meeting that the Board had a lot to discuss and set another meeting for July 25, 2024. D'Agostino's claim that he had no idea there was a Board meeting on July 25 is simply false.

In this section of his brief, D'Agostino cites to the case of Cipriani Builders, Inc. v. Madden, 389 N.J. Super. 154 (2006). He quotes three paragraphs from the Cipriani case at pages 164-166. Pb 16. However, D'Agostino very cleverly leaves out a crucial part of the case--found in the middle of the three paragraphs to which he cites. D'Agostino skipped over this part of the decision:

> "Our Courts also distinguish between membership decisions of private associations whose activities are primarily social or fraternal, such as the Masons and the Elks, and membership decisions of associations whose activities directly affect the economic interest of their members, such a professional society and trade associations." Id. at 165.

That's a critical part of the case D'Agostino must have read because he cited the paragraphs right before and right after this paragraph. Further, I pointed out this exact omission by D'Agostino in my October 21, 2024 letter brief to the trial court. Pa97-Pa98. In spite of knowing this part of the case, D'Agostino left it out again. He wants to conflate social clubs with trade/professional associations and religious groups, however, our courts have repeatedly said social clubs are not on the same footing as trade/professional and religious organizations. Id.

In the Cipriani case the Court got involved with the Plaintiff's

membership dispute because he was expelled from a trade association that impacted his livelihood. The Toms River Chess Club is not a professional society or trade association. They provide a place for people to play chess games and they run a club championship. A couple of times a year, they'll throw holiday parties. In Cipriani the Court got involved because membership in a professional society or trade association, can affect "an individual's opportunity of earning a livelihood and serving society in his chosen trade or profession." Id. That's not the case here.

VI. D'Agostino Has Not Suffered an Invasion of His Civil Rights of His Person or Property

D'Agostino quotes multiple New Jersey cases, as well as a plethora of out of state cases. What D'Agostino does not address, and what he cannot overcome, is that he does not have damages sufficient to justify judicial intervention. As the Appellate Division in Loigman v. Trombadore, 228 N.J. Super. 437, 450 (App. Div. 1988) ruled:

> "Generally, judicial intervention into the affairs of a non-profit association is justifiable only when the complaining parties have suffered an invasion of their civil rights, of persons or property."

He simply has no damages. D'Agostino claims "Thus, I have suffered significant and emotional distress, as well as pecuniary damages." Pa116 (last sentence). Self-serving, conclusory statements are not enough. United States

Pipe & Foundry Co. v. American Arbitration Asso., 67 N.J. Super. 384, 399-400 (App. Div. 1961); See Also Ardiles v. D'Agostino, 2020 N.J. Super. Unpub. LEXIS 1631, at page 16 (App. Div.) and D'Agostino v. eBay, Inc. 2013 N.J. Super. Unpub. LEXIS 2272, at page 7 ("For those reasons, in addition to the speculative nature of any damages, the trial judge denied the request for a new trial.").

D'Agostino tries to argue he meets the standard by citing to the Rutledge case, 93 N.J. 113, which in turn cites to the Higgins case, 51 N.J. 191 (1968). Pb15. However, the parts of those cases he cites to are referring to *professional* harm. Specifically, D'Agostino quoted the Rutledge Court where it said:

> "The *Higgins* court noted that "[t]he loss of *status* resulting from the destruction of one's relationship to a **professional** organization of times may be more harmful than a loss of property or contractual rights", 51 *N.J.* at 200 (emphasis in the original), and concluded that the status and **professional recognition** conferred by membership in a **professional organization** warranted at least a limited judicial examination of the reason for plaintiff's expulsion." 93 N.J. at 118-199 (emphasis added).

D'Agostino cites to Zelenka v. Benevolent & Protective Order of Elks, 129 N.J. Super. 379, 382-383 (App.Div. 1974), but that does not apply to

D'Agostino's case. In Zelenka, the Plaintiff was expelled for complaining about the Elk's racist policies. Id. At 381. That was held to be against the public policy of the State of New Jersey. Thus, in Zelenka judicial intervention was warranted.

D'Agostino's claims that Carlson allegedly tried to make D'Agostino "look like the villain and himself look like the victim." Pa28 at #26 and 29. That is not an issue of "overriding public interest that requires judicial intervention." Stowell v. N.J. State Ass'n of Chiefs of Police, 325 N.J. 512, 516 (App. Div. 1999). Neither is D'Agostino's proclamation that Board members can only discuss club business in official Board meetings. D'Agostino's claim that Carlson also told people D'Agostino was trying to get him to sign an admission when it was only an acknowledgment of service, does not merit judicial intervention. Similarly, D' Agostino claim's that club members were not interested in his video because of Carlon is not actionable.

D'Agostino has a long list of petty grievances but no damages. There are no civil rights violations here. This brings us back to the starting position: "Private organizations…are entitled to the utmost latitude in their regulation and management of internal affairs." Danese v. Ginesi 280 N.J. Super. 17, 25 (App. Div. 1995).

Another reason why D'Agostino has no damages is because he has plenty of other opportunities to play chess besides at the Tom River Chess Club. The New Jersey State Chess Federation (NJSCF) organizes multiple events each year and lists those playing opportunities on its website (https://njscf.org/). Their website also provides information on multiple chess clubs around the State.

The United States Chess Federation (USCF) lists dozens of chess tournaments in the tri-state area on their website (https://new.uschess.org/). Many of these events take place in New Jersey.

Both the USCF and the NJSCF provide help and support to individuals who want to start their own chess club. For example, the USCF offers for free a 20 page guide on their website on starting and successfully running a chess club. (https://new.uschess.org/sites/default/files/media/documents/uscf-sccg-2025-final-draft.pdf).

There are individuals and businesses who run various chess tournaments all over the United States, including in the tri-state area. One such group is the Continental Chess Association ("CCA") which runs multiple chess tournaments around the country, including the largest open chess tournament in the World each summer, usually in Philadelphia. D'Agostino v. Goichberg, Continental Chess Association, 2024 N.J. Super.

Unpub. LEXIS (App. Div.) at page 2. D'Agostino has played in multiple CCA chess tournaments. Id. at page 3. So, there several clubs and many chess tournaments at which D'Agostino could play chess besides the Toms River Chess Club.

VII. D'Agostino Does not Have a Claim for Defamation or Intentional Infliction of Emotional Distress

D'Agostino wanted his Chancery Division case dismissed without prejudice so he could pursue a Law Division claim for defamation. Specifically, D'Agostino's amended complaint states:

> "77. The order of this Court shall be without prejudice to a Law Division case against Mr. Carlson personally for his defamation and infliction of emotional distress upon Plaintiff. If Plaintiff should bring such a lawsuit, Mr. Carlson shall not be able to obtain coverage or a defense under the club's insurance policy." Pa35.

D'Agostino has not plead a case of defamation.

To prove defamation, a plaintiff must establish that the defendant "(1) made a defamatory statement of fact (2) concerning the plaintiff (3) which was false, and (4) which was communicated to a person or persons other than the plaintiff." D'Agostino v. Musical Heritage Society, 2015 N.J. Super. Unpub. LEXIS 2010 at page 30, citing, Feggans v. Billington, 291 N.J. Super. 382, 390-391 (App. Div. 1996). None of the alleged statements

Carlson made are defamatory. For example, D'Agostino's amended complaint states:

> "26. At the end of the night when a group of club players were standing outside, I knew that he was about to go out to eat with the club secretary and a bunch of other members (and I knew I was not welcome), so all I did was ask Nick not to discuss any club business when he went out to eat. He promised me that he would not do so. But later I found out that he did not at all keep his promise - that no sooner than they got there, that was exactly what he did - and I also later found out that in the process, he grossly distorted the facts to make me look like the villain and himself look like the victim." Pa28

D'Agostino's amended complaint says Carlson also sent an email that "disingenuously suggested again that I was being the villain and he was the victim. " Pa28 at paragraph #29.

These comments and the other alleged statements that D'Agostino claims Carlson made cannot support a defamation claim "A vague conclusory allegation is not enough" to support a defamation claim. D'Agostino v. Musical Heritage Society at page 30. See Also D'Agostino v. Ristorante, 2016 N.J. Super Unpub. LEXIS 2318 at pages 5-6.

D'Agostino similarly does not have a claim for intentional infliction of emotional distress. It's not even a close call. "Generally speaking, to establish

a claim for intentional infliction of emotional distress, the plaintiff must establish intentional and outrageous conduct by the defendant, proximate cause, and distress that is severe." Bucklet v. Trenton Sav. Fund Soc., 111 N.J. 355, 366 (1988).

"The conduct must be 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" Id.

After Carlson was sued and was upset, he let Chess Club members know about the situation. D'Agostino claims he was harmed by this and states:

> "30. But it gets worse. It turns out, Nick had secretly communicated with most of the members telling him how stressed out he was over this, how I was so wrong for doing what I did, making gross misrepresentations so as to taint me in the eyes of all the members." Pa29.

In paragraph #29, D'Agostino claims:

> "I then tried to mitigate the damage Nick caused to my reputation with my own email to the members with a link to a video, but unfortunately it seems that my email and video were largely ignored (not viewed), likely because most of the members had already been tainted against me by that time." Pa29

Even if true, none of Carlson's alleged actions are "so extreme and outrageous . . . as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Juzwiak v. Doe, 415 N.J. Super. 442, 451 (App. Div. 2010). Carlson's actions, given D'Agostino's behavior, were appropriate. But regardless, it's not "beyond the bounds of decency." Carlson talking to board members outside of official club meetings, could in no way have caused D'Agostino emotional distress "so severe that no reasonable man could be expected to endure it." Id. Pa 31 at paragraph #44.

In paragraph 48 of the amended complaint, D'Agostino talks about the "bombshell." Pa32. However, the "bombshell" was nothing of the sort, and was more of a complete dud:

> "48. And then at the very end of the meeting, Jim dropped another bombshell – Jim understood from Nick that I tried to have Nick sign an admission of liability when I served him the papers. I told Jim and Vinnie that wasn't true, that I was just asking him to sign an acknowledgment of service, which merely stated that he received the papers and would respond to them. So this was something else that Nick had lied about." Id.

D'Agostino may claim this statement by Carlson (admission v. acknowledgment) caused him off the charts emotional suffering. Maybe in his mind it did (though that's not very likely). However, the test is an "objective" one and not one "based on [a] plaintiff's personal, idiosyncratic reaction." Juwiak, 415 N.J. Super. at 450.

D'Agostino does not have any facts that would support a defamation claim. Instead, he repeats variations of the same vague, conclusory allegations. D'Agostino has not plead any facts even close to suggesting a cause of action for intentional infliction of emotional distress. The trial court was correct to dismiss D'Agostino's amended complaint with prejudice.

VIII. The Case D'Agostino v. Ionos Does Not Help The Plaintiff's Case But Does Show How He Abuses The Court System

D'Agostino makes multiple references to the case D'Agostino v. Ionos, Inc., as if that case shows what should have happened in the present case.

In the Ionos case, D'Agostino filed a Complaint for Injunctive Relief which was dismissed with prejudice on June 27, 2024. In his statement of reasons, the Hon. Mark Troncone noted "Plaintiff is unable to establish any harm aside from potential personal inconvenience." Pa145

Apparently, Judge Troncone did say D'Agostino could pursue a Law Division case but the order did not reflect that.

According to the Court's website, on July 10, 2024 D'Agostino filed a

motion for reconsideration. D'Agostino asked the court to correct the June 27, 2024 order dismissing his potential Law Division case with prejudice. However, the bulk of the reconsideration motion was challenging the court's dismissal of his complaint for injunctive relief with prejudice.

On August 19, 2024 a new Chancery Division Judge, the Hon. Therese Cunningham, changed the order so it was consistent with the prior judge's ruling. Judge Cunningham denied the balance of the motion for reconsideration.

On August 29, 2024, D'Agostino filed another request for injunctive relief. Please see D'Agostino's "Application For Emergent Order to Show Cause to provide Injunctive Relief" on the Court's website.

On September 2, 2024 D'Agostino filed "Plaintiff's Notice of Motion To Reopen Pursuant To R. 4:50." This was yet another motion for reconsideration.

D'Agostino's "Application For Emergent Order To Show Cause for Injunctive Relief" was denied. D'Agostino's "Notice of Motion To Reopen Pursuant to Rule 4:50" was also denied.

In the Ionos case, D'Agostino essentially filed 3 motions for reconsideration even though he had no damages. He did not even have any personal inconvenience. He filed multiple frivolous motions over *potential* personal

inconvenience. The Ionos case is a good example of how D'Agostino abuses the court system.

The fact that Judge Cunningham honored another judge's earlier ruling, does not mean the order in Ionos case should have been changed. It does not mean Judge Cunningham's decision in our case was wrong. Reading through the Ionos case leads to the conclusion the correct decision would have been to leave the original order dismissing everything with prejudice unchanged.

A better example than the Ionos case is another 2024 Ocean County case, D'Agostino v. Discover Bank, et al. In that case, D'Agostino was claiming he was owed "likely several million dollars." The case was dismissed with prejudice on a motion to dismiss.

CONCLUSION

Based upon all of the above, it is respectfully requested that Plaintiff's appeal be denied.

Law Offices of Leo B. Dubler, III
Attorneys for Defendant/Respondent
Nicholas Carlson, President of Toms River Chess Club

Dated: July 16, 2025

Leo B. Dubler, III

STEVEN D'AGOSTINO, in his official capacity as the webmaster for the Toms River Chess Club

Appellant / Plaintiff

v.

NICHOLAS CARLSON, in his official capacity as the president of the Toms River Chess Club

Respondent / Defendant

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-1138-24

CIVIL ACTION

SAT BELOW:
Honorable Therese A. Cunningham,
Ocean County Chancery Division,
DOCKET NO. OCN-C-71-24

REPLY BRIEF

FOR APPELLANT STEVEN D'AGOSTINO

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[0] The trial court briefs from OCN-L-181-25 are germane to the issues that were raised by counsel in his Respondent brief.

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

For the sake of simplicity, Plaintiff-Appellant Steven D'Agostino shall hereinafter refer to himself in the first person.

Rather than addressing my arguments, instead the Respondent's brief primarily consists of ad hominem attacks against me. Although at first most of these attacks are made indirectly and subtly, at the end they then are made directly and explicitly – both at the very end of the Preliminary Statement section (*see* Db4), and also at the very end of the Argument section (*see* Db25-Db27). Despite the thinly-veiled disguise that Mr. Dubler (i.e. the Respondent's counsel) attempts to employ as his excuse for doing this, it is obvious that that these personal attacks were made for sole purpose of tainting me in the eyes of this Court.

Additionally, Mr. Dubler tries to argue his own different version of facts (which are completely irrelevant to this appeal, given that the complaint was dismissed for a purported failure to state a claim), where all of his different "facts" are at best inaccurate (with many being completely false), and where some of which were never even raised below (thus inappropriate on appeal).

And lastly, to the scant extent that he addresses my actual arguments, he therein distorts my arguments, as well as the controlling authorities pertaining to same.

PROCEDURAL HISTORY

Please refer to my initial / principal / original brief. (See Pb3)

STATEMENT OF FACTS

For the relevant and actual facts, please refer to my principal / original brief. (See Pb6). I will resist the temptation to herein rebut all of the false, irrelevant, and/or improperly raised "facts" that were purported / asserted within the Respondent brief.

Instead, in this section I will limit my rebuttal to just one example of how Mr. Dubler distorts the facts as they relate to my allegations (which he either grossly mischaracterizes or plucks portions out of context). For example, about the issue of our not discussing any club business outside of board meetings, Mr. Dubler distorts the facts as to my allegations. He repeatedly mischaracterizes my pleadings to make it appear as if it was my "decision" and (nonsensical) "edict" (see e.g. Db2-Db3), and further contends that it was "strange requirement" imposed by me (see e.g. Db7), that we would not discuss any club business outside of board meetings.

However in ¶8 of my initial complaint (see Pa2), as well as ¶8 of my amended complaint (see Pa25), my allegations clearly plead the fact that we (i.e. the entire board) had all agreed at an early board vote back in 2021, that none of us would do that. That is, within ¶8 of both versions of my complaint, I plead (in pertinent part):

> "At its first meeting, **the new board unanimously agreed that** all club decisions would be made by a majority of the board vote, that there would be full transparency to the members (via open meetings which anyone could attend and listen to, and the club members would have an opportunity at the end to voice any concerns they may have), **that there would be no secret or back room meetings (i.e. without all the board members present)**, that each board member would only get one vote, and that nobody's vote would have more weight than that of any other member." [emphasis added]

ARGUMENTS

Although the Respondent brief primarily consists of ad hominem attacks against me (both indirect and direct), I will not address these until the end of this reply brief, since Mr. Dubler's direct attacks did not come until the very end of both sections in his brief. I believe that his reasoning for placing these direct attacks at the ends of those sections was strategic in nature, apparently in attempt to "save his best arguments for last" - as inherent human nature suggests that it would likely be what the Court would remember most (*i.e.* what is known as "the recency effect").

Thus I will begin my reply by rebutting the scant legal arguments made in the Respondent's brief.

1) Mr. Dubler incorrectly argues as to the standard of review.

Mr. Dubler argues that the NJ Supreme Court's rulings in *Notte v. Merchants Mut. Ins. Co., 185 N.J. 490, 888 A.2d 464 (2006)* stand for the proposition that I was properly denied leave to amend my complaint. However, that is wrong on multiple levels. For starters, that case is entirely inapposite as it involved the "relation back theory" and *R. 4:9-3* as to otherwise untimely claims (not at all applicable here), it also involved amending the complaint to add a claim that allegedly was "statutorily waived" (also not at all applicable here), and it also involved summary judgment motions which were made after the completion of discovery (also not at all applicable here). Second, the NJ Supreme Court agreed with this Court's analysis

that in general, the desired amendment should have been allowed. Thus that authority, even though inapposite to this case, only further supports my position. [1]

2) Although not a requisite, a social club's by-laws create a contractual relationship Even though it is not necessary for me to establish a contractual right in order for a court to intervene, Mr. Dubler palters in this regard - arguing that the authorities that I had cited in my brief are no longer good law (i.e. essentially superseded by *Rutledge v. Gulian*, 93 N.J. 113 (1983)). That is, on Db10 Mr. Dubler argues:

> The NJ Supreme Court in Rutledge v. Gulian, 93 N.J. 113, 123 (1983) stated:
> "The theory that the rules constitute a contract between the member and the organization has fallen into disrepute.", citing, Higgins v. American Society American Pathologists, 51 N.J. 191,200 (1968)." [sic]

However, even aside from his incorrectly captioning *Higgins v. American Society of Clinical Pathologists*, 51 N.J. 191 (1968), he also conveniently "cherry picks" one partial sentence from *Rutledge v. Gulian*, 93 NJ 113, 123 (1983), therein citing it out of context. That is, in its full context, the paragraph states:

> Moreover, we would reach this result even if the Grand Master were not empowered to suspend the Code for Trials. A private organization is not **in all instances** bound by its internal rules. The theory that the rules constitute a contract between the member and the organization has fallen into disrepute, *Higgins*, 51 *N.J.* at 200; and while the member presumably has a reasonable expectation of receiving fair treatment, it is **not necessarily** the case that he expects that a particular set of **rules must at all times be followed**. The threat of arbitrary action looms as the rules loosen, but such danger may be met as it arises. **In determining whether a private organization is bound by its established procedures, we would again balance the organization's interest in**

[1] The only reason why the case was remanded back to the Appellate Division for further proceedings was because the panel failed to address the issue of whether or not the amended claim would be statutorily waived by *N.J.S.A. 34:19-8* (which obviously is inapplicable here).

> **autonomy and its reason for straying from its rules against the magnitude of interference with the member's interest in the organization and the likelihood that the established procedures would safeguard that interest.** [emphasis added]

Further, another one of his own cited authorities **directly refutes** his asserted proposition that the 1983 *Rutledge* decision essentially abrogated the earlier Courts' rulings about a club's by-laws creating a contract between that club and its members. That is, he repeatedly relied upon this Court's 1988 decision in *Loigman v. Trombadore*, 228 N.J. Super. 437 (App.Div.1988) – however that 1988 *Loigman* decision, which was rendered 5 years **after** the 1983 *Rutledge* decision, clearly held: "the constitution and by-laws of a voluntary association become a part of the contract entered into by a member who joins the association." *Loigman* at 449-450

But even assuming arguendo that *Rutledge* stands for his asserted proposition that our by-laws can not create a contract under any circumstance, that same authority makes clear that nonetheless I would still have valid claims in this case. In fact, as set forth in my initial / principal brief, the *Rutledge* Court held that a member's rights in a voluntary association went beyond those of contract. That is, on Pb15, I cited to *Rutledge* at 118-119, which held (in pertinent part to this issue):

> The rights accorded to members of an association **traditionally have been assessed in terms of the property interests in the assets of the organization or in terms of contract rights**. 51 *N.J.* at 199. **The modern trend, however, sees the member's valuable personal relationship to the organization as the true basis for judicial relief against wrongful expulsion.**
>
> The *Higgins* court noted that "[t]he loss of *status* resulting from the destruction of one's relationship to a professional organization **oftimes may be more harmful than a loss of property or contractual rights**", 51 *N.J.* at 200

This is consistent with several other authorities (both before and after *Rutledge*) which have held that the emotional deprivation of being expelled from a social club often outweighs any contractual or property damages caused by same.

3) A court's ability to intervene is not limited to religious organizations or trade associations, nor is it limited to an invasion of civil rights, of persons and property, nor is it limited to instances of public policy violations.

Within 4 separate point headings, Mr. Dubler attempts to distort several authorities (and/or rely upon older authorities that have been expressly overruled), to make his contrary arguments (that the court's ability to intervene is so limited). In fact, even some of the very same authorities that he cites in the Respondent brief refute him.

For example, on D12 he cites to this Court's unpublished opinion in *Passero v. North Jersey Country Club, Inc.*, 2014 N.J. Super. Unpub. LEXIS 1280. However when taken in its proper context, this authority actually supports my position - in that not only was that case not dismissed on a motion for failure to state a claim (i.e. as mine was); but further when the trial court dismissed on a motion for summary judgment, this Court later reversed and remanded, because the trial court improperly engaged in an fact-finding exercise when it dismissed the plaintiff's claims (even though it was only a dismissal without prejudice). Mr. Dubler cites only the portion of *Passero* that stated: "We are dealing here with a country club, a private association, and neither the nature of the association, nor the dispute involved in this case, implicate any public interest or concern. Under these

circumstances, courts should be extremely reluctant to interfere with internal disputes." However he conveniently omits the very next sentence in *Passero* that stated (in pertinent part): "This analysis, however, does not lead to a conclusion that the Board is vested with unfettered authority ..."

Likewise, Mr. Dubler cites to one paragraph (consisting of just 2 sentences) in *Baugh v. Thomas*, 56 NJ 203, 208-209, 265 A.2d 675 (1970) for the proposition that only expulsion from a church or religious organization could cause the serious emotional deprivation as to be actionable. That is, he cites this paragraph of *Baugh*:

> We believe that expulsion from a church or other religious organization can constitute a serious emotional deprivation which, when compared to some losses of property or contract rights, can be far more damaging to an individual. The loss of the opportunity to worship in familiar surroundings is a valuable right which deserves the protection of the law where no constitutional barrier exists.

However, the very next sentence and paragraph in *Baugh* further clarified that:

> Moreover, except in cases involving religious doctrine, we can see no reason for treating religious organizations differently from other non-profit voluntary associations. In the context of other voluntary associations, we have held that there need not be a property right at stake for a court to assume jurisdiction. The status of membership in a voluntary association is sufficient to warrant at least limited judicial examination of the reason for expulsion. *Higgins v. American Society of Clinical Pathologists*, 51 N.J. 191 (1968).

Mr. Dubler also tries to distort the rulings in *Zelenka v. BPOE*, 129 NJ Super. 379 (App.Div. 1974) for the proposition that courts will only get involved with issues involving non-professional, non-religious voluntary organizations only when there is a violation of public policy. However, a critical material distinction is the fact that in *Zelenka*, the plaintiff was the party whom had violated the club's express "statute" (i.e. the club's own set of rules and by-laws), by his publishing an article

without the club's authorization. But the club didn't violate any of its own rules, as their statutes clearly codified that expulsion was a potential consequence for it. The plaintiff admitted that he was the one who "contravened the statute," but contended that the club's internal statute violated his United States Constitutional right to free speech, and this Court agreed. Thus because it was a tantamount to a public policy violation, this Court took the unusual step of **overruling** the club's own express rules and reversed his expulsion. But that is opposite to the situation in this instant matter, where here it was the defendant who violated the club's own express rules. So to provide me with relief, here a court only needs to **enforce** our **club's own** rules. Thus the threshold for intervention here is much lower than it was in *Zelenka*

Moreover, in *Zelenka* this Court noted that although courts were generally "loath to exercise visitorial powers upon voluntary organizations of a purely private nature, ... particularly those not affecting economic or civic interests,!á !the personal value to plaintiff of his membership ... calls for an evaluation [and possible judicial intervention]." In *Zelenka*, this Court cited *Trautwein v/ Harbourt*, 40 NJ Super 247 (1956), as well as a plethora of other authorities, and therein held:

> * * * There can be no doubt as to the conspicuous place of social and fraternal organizations in American society, Abernathy, ["The Right of Association", 6 S. Car. L.Q. 32, 33 (1953)], nor as to the cachet attributed by almost every individual to membership in one or more particular voluntary associations, societies or groups, Comment, "Protection of Membership in Voluntary Associations," 37 Yale L.J. 368, 372 (1928); Annotation, 20 A.L.R.2d 344, 391. Professor Chafee has said that **in comparison with "such emotional deprivations" as loss of membership in club, union, school or church, "mere losses of property often appear trivial."** op. cit. supra (43 Harv. L. Rev., at p. 998). [40 N.J. Super. at 265] [*emphasis added*]

> **The personal value to plaintiff of his membership** in the order thus calls for an evaluation of his relational interests, weighed against the assertion by the order of a constitutional right of selectivity in the private associations of its members. Cf. Trautwein v. Harbourt, supra, 40 NJ Super. at 267 [*emphasis added*]

This is made crystal clear even by the *Rutledge* case, which is the authority that Mr. Dubler relies upon most heavily for his contention that the current controlling authorities have superseded the rulings in *Baugh*, *Higgins*, etc. However, it is clear that the *Rutledge* Court did not overrule or supersede *Baugh* - instead it explained a key material distinction that existed between its instant matter and the *Baugh* case:

> In *Baugh v. Thomas*, supra, 56 N.J. 203, the threat to the plaintiff's interest was great (expulsion from his church), as was the likelihood that **established procedures would have protected that interest** (there would have been an insufficient number of votes to expel him), whereas **the defendant church demonstrated no justification for ignoring its established procedures, and judicial intervention compelling adherence** to a simple ministerial task **did not threaten** the church's **autonomy**. [emphasis added]

So on one hand, Mr. Dubler argues that the expressly-stated "overrule" in *Baugh* is not controlling; while on the other hand and out of the other side of his mouth, he argues that an unstated, purportedly-implied "overrule" in *Rutledge* is controlling.

Moreover, the *Rutledge* Court directly made it clear that even aside from trade associations or religious organizations, and even just for purely private social clubs that offer no economic or religious benefit, courts will still protect members against wrongful expulsions. As the *Rutledge* Court held:

> Similarly, the court in Zelenka, supra, held that **expulsion from the order of Elks warranted judicial review in light of the esteem conferred by membership in that fraternity**.

This premise was clearly explained by this Court's ruling in *Hernandez v. Bosco Preparatory High*, 322 N.J. Super. 1(1999), which interpreted *Rutledge* as follows:

> Membership in a private organization receives the least procedural protection in our judiciary. **The court must first balance the conflicting interests of the association's autonomy and the member's interest in the association; then, the court will only interfere when the association unfairly neglects to follow its established procedures for discipline.** (citing *Rutledge, supra. 93 NJ at 119*)

Then it seems that after paltering for many pages within his Respondent brief, Mr. Dubler finally concedes to this conclusion, wherein he himself argues: "Courts are less likely to get involved in disputes involving social clubs" [as opposed to religious organizations to trade associations]. (See Db13). To be clear, I agree that it is a "less likely" type scenario, and I have never suggested otherwise. Although my Appellate brief did not specifically mention this one way or the other, within my trial court brief I had expressly pointed out that in *Cipriani Builders, Inc. v. Madden*, 389 NJ Super. 154 (App. Div. 2006), this Court held that courts will give greater protections religious organizations or trade associations, which in turn implies lesser protections will be afforded to purely social clubs. (See Pa121)

Thus Mr. Dubler is being disingenuous (at best) when he argues that I am conflating the rulings in *Cipriani* and asserts that I am trying to suggest that courts should view all voluntarily associations equally "on the same footing". (See Db16)

Instead, what I am challenging is Mr. Dubler's repeated argument that "less likely" should essentially equate to "never", which of course is plainly wrong. That is, this Court's findings in *Cipriani* merely equates to the conclusion that a purely private, non-economic, non-religious social club will have somewhat lesser protections – but it does not equate to Mr. Dubler's suggested conclusion that a

purely private, non-economic, non-religious social club will either have no protections at all, or have only a few very narrow protections.

Lastly, I believe what Mr. Dubler chose to be silent about is also quite telling. That is, Mr. Dubler failed to address any of my arguments about the "bad faith" basis for intervention (i.e. courts will intervene in the internal affairs of a social club when its officer acts in bad faith). Thus it appears that Mr. Dubler was unable to concoct any purported basis to refute my multiple authorities. (See Pb21-Pb23) [2]

4) Mr. Dubler's improper and false: irrelevant facts; and direct ad hominem attacks

Mr. Dubler's improper and false direct ad hominem attacks (which therein contain numerous purported "facts" that are either grossly distorted, completely false, completely irrelevant, and/or never raised below), are first summarized on Db4, then resume again within his "Arguments" sections starting on Db19 and continue in first gear until Db21, where the direct attacks then shift into second gear and continue to Db23, where the direct attacks shift into third gear, and continue to Db25, where the direct attacks shift into overdrive and continue until the end of his brief at Db27. There are so many that I don't even know where to begin - and since I don't want to mire this Court, I will only respond to a few (in no particular order).

[2] His brief also does not address whatsoever my extensive arguments that the defendant cannot unilaterally and retroactively change our by-laws. And as to my arguments that "the court erred in dismissing all of my claims with prejudice", his only response was to attack me personally and say that my other case (D'Agostino v. IONOS) should also have been dismissed with prejudice.

His brief attempts to refute my alleged facts, such as the defendant's deliberate failure to notify me about 2 different board meetings (i.e. the one in May for the impromptu proposed by-law change) as well as the one in July to "indefinitely suspend" my membership. (See Db15) But even aside from the falsehood of this attempted refutation of my allegations, given that he made it crystal clear during the Oct 25, 2024 motion hearing that his motion to dismiss was brought solely for a failure to state claim, then his dispute of my version of the facts, as well as his assertion of different facts, is clearly irrelevant to the issues on appeal.

Additionally, in his (false and irrelevant) attempt to refute the fact of my not being given notice about the meeting for my removal, now for the first time on this appeal, he also only now raises a new false fact: about the purported availability of other nearby chess clubs for me to attend instead. (See Db20) But this attempt is even more inappropriate, as this "fact" was never raised at all on the record below. And that's aside from all of his attempts to taint me in the eyes of this Court with ad hominem attacks. Here are just a few examples of his improper direct personal attacks that are objectively proven false – the first from his own cited authorities.

For example, in his brief Mr. Dubler refers to me as a "serial filer of frivolous lawsuits" (Db4). But even setting aside both the irrelevance and the disparaging nature issue of this accusation, undoubtedly Mr. Dubler must know this statement to be false, as although he cited to 9 different cases that involved me (*i.e. Ardiles v.*

D'Agostino, D'Agostino v. Serpico's Ristorante, D'Agostino v. eBay, D'Agostino v. Musical Heritage Society, D'Agostino v. Goichberg, D'Agostino v. Domino's Pizza, D'Agostino v. Discover, D'Agostino v. IONOS, In Re J&J Pizza), nowhere within any of these cases, did any Court ever once refer to any of my claims as frivolous.[3]

I think it is interesting how the trial court allowed him to similarly disparage me in his motion papers as a "frequent filer", yet when I tried to characterize defendant as a "spoiled brat", she immediately jumped in and chastised me for what she believed to be "name-calling" on my part. (See e.g. Pa39, Pa68, 3T11).[4] Thus, it seems to be a one-way street against me. And moreover, as I detailed within my initial opposition, in reality I only file about 2 or 3 cases per year. (See Pa82-Pa85)

But the reason why defense attorneys will engage in such heavy-handed tactics is because they know it can be a very effective weapon that will usually taint the court against their adversary (to at least some degree, if not to an extreme degree).[3]

As a second example, Mr. Dubler falsely states that I had filed 3 motions for reconsideration in the IONOS matter. In that case, a new and separate issue arose just after IONOS had filed an opposition to my (sole) motion for reconsideration. I then tried to raise that issue in the reply brief, but the Court refused to hear it at that time. So I then filed a motion with respect to that new issue, but this also required a

[3] The only instance where it had ever came anywhere even remotely to such had occurred during the oral argument of Discover's motion to dismiss my claims – but solely because of that attorney's ad homimen attacks. So that case clearly reveals that tainting me in the eyes of a court can be a powerful weapon. I will save that case for the end of these arguments because it is so illustrative of Mr. Dubler's true motives.

separate "motion to reopen" (as the case was then already in a closed status).[4]

As a third example, Mr, Dubler falsely states that my case against Discover was dismissed with prejudice. He must have known this to be false, because the order itself expressly stated my claims against Discover were dismissed without prejudice. (See Pra1-Pra2). This was also plainly evident to Mr. Dubler from the *R. 1:13-7* warning notice that was generated by Civil Intake after the order of dismissal was entered, as well as the case status that had been still showing on eCourts as "active" (it was scheduled to be dismissed on or about July 29, 2025 for lack of prosecution - I delayed pursuing this case due to what I will discuss next).[3 4]

My case against Discover exemplifies the harm caused by a defense attorney's choice to taint a pro se party in the eyes of a court (i.e. by accusing him of being a "frequent filer" or "serial litigant"). In that case, Discover's attorney filed a motion to dismiss for failure to state a claim, which did not contain any attacks. (See Pra3)

[4] Mr. Dubler likes to insult me, but instead he should learn that the old adage that "those in glass houses should not throw stones". That is, I could reciprocate and call him a mediocre attorney, for a number of valid reasons: 1) during the pendency of our other mutual case (*D'Agostino v. Goichberg*), several times the Appellate clerk had to instruct him to correct multiple deficiencies in his Appellate filings; 2) it took a motion by me (which was ultimately granted) to have him remove numerous improper references to a superabundance of material that was not on the record below but was nonetheless contained in that Respondent Brief and Appendix; 3) his Respondent briefs (in both appeals) were/are sloppy in appearance; 4) the table of contents of this Respondent brief lacks any listing of his Argument section's point headings; 5) the un-indexed point headings within the Argument section do not specify where in the record below he had raised those particular arguments; 6) he cites to nine unpublished opinions, but only includes five of those in his appendix; and 7) he even misnames and/or misspells several captions of the authorities that he cites (e.g. "Buckle**t** v. Trenton", instead of "Buckley v. Trenton"; "Juwiak" instead of "Ju**z**wiak", and "Higgins v. American Society American Pathologists" instead of "Higgins v. American Society of Clinical Pathologists".(Dbii, Db10, Db23, Db25). I could call him dishonest as well, as he made several misrepresentations to this Court on multiple occasions.

I then filed a strong, cogent, and meritorious opposition to that motion. (See Pra14). So then in his reply brief, because he knew that he couldn't offer any valid legal refutations to my arguments, instead the defense attorney resorted to the vile tactic (and proven weapon) of making personal attacks against me. (See Pra22).

At oral argument, the judge (at first only referring to his law clerk's markups) expressly found that my pleadings were "adequate". But then after the defense attorney directed the judge's attention to other issues raised in his reply brief, the judge saw the extensive attacks that he had therein unleashed upon me, and the judge then did a 180-degree reversal, dismissing my complaint without prejudice.[5]

This unveils the real reason for Mr. Dubler's attacks: he knows they can work magic. So I can only hope this Court will not be swayed by this tactic. Thank you.

Respectfully submitted,

Steven D'Agostino

[5] Far worse still, the judge was so tainted by this tactic, that after reading what the defense attorney wrote, the judge then actually suggested strategies to the defense attorney, and at the end of the hearing admitted that he was inclined to dismiss my complaint because he thinks that I "like to sue people" (a belief that is not true at all). And when he dismissed my complaint without prejudice, he made it clear that he did so only because it was my first complaint, and recognized that he was required to give me at least one chance to file an amended complaint, and specifically said I would only get one more chance. And if I didn't "get it right" in that amended complaint, he then would dismiss it again, this time with prejudice, and that I could be facing other "consequences" for it. Yet when I politely asked him to specify the defects/deficiencies that he (purportedly) found in my pleadings, he refused to tell me what any of those were. Instead he stated that he did not want to do so, because he did not want to give me "a safe harbor". Thus it became clear to me that no matter how eloquent and/or detailed my amended complaint should turn out to be, he would still nonetheless categorically dismiss it, this time with prejudice; and then if that alone wasn't bad enough, on top of that I might also be hit with an untold amount of sanctions–all for what he would purport to be unresolved pleading deficiencies.