

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,
BY LETITIA JAMES, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., WAYNE LAPIERRE,
WILSON PHILLIPS, JOHN FRAZER, and
JOSHUA POWELL,

Defendants.

Index No. 451625/2020

IAS Part Three
Hon. Joel M. Cohen

**AFFIRMATION OF
P. KENT CORRELL, ESQ.**

I, P. KENT CORRELL, an attorney duly admitted to practice in the courts of the State of New York, hereby affirm the following under the penalty of perjury pursuant to CPLR 2106:

1. I am the attorney of record for Defendant Wayne LaPierre in this action, and am fully familiar with the facts and circumstances in this case.

2. I make this affirmation in support of LaPierre's Motion to Dismiss the Second Amended Verified Complaint ("Complaint").

I.

PRELIMINARY STATEMENT

3. Despite this Court's decision and order dismissing the Attorney General's unjust enrichment claim against LaPierre and the other individual defendants, the Attorney General has now filed an amended complaint in which she continues to seek judgment against them on the theory that they have been "unjustly enriched". In addition, in her new complaint, she seeks judgment against LaPierre and all of the other defendants for appointment of a monitor and governance expert and implementation of governance reforms, and as well as other relief that is

not provided in section 720 of the Not-for-Profit Corporation Law, stubbornly refusing to join the National Rifle Association of America, which should be a party. LaPierre moves to dismiss the new complaint under CPLR 3211(a)(1), (2), (3), (7) and (10).

II.

FACTS

A. The New York Attorney General Sues “The National Rifle Association of America, Inc.”, LaPierre and Others and the Court Dismisses Her Dissolution, NYPMIFA and Unjust Enrichment Claims.

4. On August 6, 2020, the Attorney General filed a complaint against “The National Rifle Association of America, Inc.,” Wayne LaPierre, Wilson Phillips, John Frazer and Joshua Powell setting forth eighteen causes of action, four of them against LaPierre.¹ On August 10, 2020, the Attorney General filed a second complaint against the same defendants, correcting an error in her verification.² In the complaint, the Attorney General alleged that “[f]or 149 years, the National Rifle Association of America, Inc. (the “NRA” or the “Association”) has operated as a New York not-for-profit, charitable membership corporation.”³

5. In October and November 2020, the National Rifle Association of America, LaPierre and Frazer moved to dismiss stay, or transfer this action under CPLR 327(a), 511(b), 2201 and 3211(a)(1) and (4),⁴ the Court denied their motions,⁵ and they answered.⁶ In his

¹ NYSCEF Doc. No. 1 (the original complaint).

² NYSCEF Doc. No. 11 (the corrected complaint).

³ NYSCEF Doc. No. 11 ¶ 1.

⁴ NYSCEF Doc. Nos. 70-99, 184-193, 196 (Motion Seq. # 001); 114-126, 132, 150, 207 (Motion Seq. # 003); 129-30, 199 (Motion Seq. # 004); 133-141 (Motion Seq. # 005); 170-71 (Motion Seq. # 006); and 156-169 (Motion Seq. # 007).

⁵ NYSCEF Doc. Nos. 210-215 (Decision + Order on Motion dated January 21, 2021).

⁶ NYSCEF Doc. Nos. 226 (Verified Answer of Defendant Wayne LaPierre dated February 23, 2021); 229 (Verified Answer of Defendant John Frazer dated February 23, 2021);

answer, LaPierre stated: “LaPierre denies that ‘The National Rifle Association of America, Inc.’, named in the caption as the lead Defendant and referred to repeatedly throughout the Complaint, actually exists, and objects to the use of the name ‘The National Rifle Association of America, Inc.’ in the Complaint on the grounds that it is fictitious, creates confusion, and has made it difficult to respond to the Complaint.”⁷

6. On August 16, 2021, the Attorney General filed an Amended and Supplemental Verified Complaint in which she added 90 new factual allegations and continued to use the name “The National Rifle Association of America, Inc.” to identify the National Rifle Association of America in the caption and throughout the pleading.⁸

7. On September 15, 2021, the National Rifle Association of America, LaPierre and Frazer moved to dismiss the Amended and Supplemental Verified Complaint.⁹

8. On March 2, 2022, this Court dismissed the dissolution, NYPMIFA and unjust enrichment claims asserted in the Amended and Supplemental Verified Complaint.¹⁰

9. On April 12, 2022, LaPierre answered the Amended and Supplemental Verified Complaint, stating: “With respect to the caption, Mr. LaPierre specifically denies that ‘The National Rifle Association of America, Inc.’ exists and therefore denies that it is a proper party-defendant.”¹¹

and 230 (Defendant The National Rifle Association’s Original Verified Answer and Counterclaims dated February 23, 2021).

⁷ NYSCEF Doc. No. 226 (LaPierre Answer), at 1, fn. 1.

⁸ NYSCEF Doc No. 333 (Amended and Supplemental Verified Complaint).

⁹ NYSCEF Doc. Nos. 348–354, 375, 391, 433, 438 (Motion Seq. # 016); 355-362, 392, 439-445 (Motion Seq. # 017); and 363-371, 393, 404-06, 431, 446-454, 456, 465-479, 545 (Motion Seq. # 018).

¹⁰ NYSCEF Doc. No. 609 (Decision + Order on Motion).

¹¹ NYSCEF Doc. No. 627 (Amended Verified Answer of Defendant Wayne LaPierre), at 1, fn. 1.

B. The Attorney General Amends Her Complaint, But Continues to Seek Restitution on the Theory that the Individual Defendants Were “Unjustly Enriched,” as well as Other Relief, including Appointment of a Compliance Monitor and Governance Expert, and Governance Reforms.

10. On May 2, 2022, the Attorney General filed a Second Amended Verified Complaint in which she again named the “The National Rifle Association of America, Inc.” as the lead defendant, and continued to seek restitution on the theory that the individual defendants were “unjustly enriched,” as well as other relief, including forfeiture of salary and damages for breach of fiduciary duty, double damages, interest, removal of LaPierre as Executive Vice President of “The National Rifle Association of America, Inc.”, a bar on his re-election or appointment as an officer or director of “The National Rifle Association of America, Inc.”, and a lifetime ban on nonprofit service.¹² In addition, she asserted a new cause of action against “The National Rifle Association of America, Inc.” and sought new relief – appointment of a compliance monitor and governance expert, and governance reforms.¹³

11. In the new cause of action, labelled “First Cause of Action For Breach of EPTL 8-1.4 (Against Defendant NRA),” the Attorney General repeats and re-alleges the allegations set forth in paragraphs 1 through 634 of the Complaint, and further alleges:

Under section 8-1.4(a)(1) of the EPTL, a trustee is defined as “any . . . corporation or other legal entity holding and administering property for charitable purposes, whether pursuant to any will, trust, other instrument or agreement, court appointment, or otherwise pursuant to law, over which the attorney general has enforcement or supervisory powers.”

Under section 8-1.4(a)(2) of the EPTL, a trustee is defined as “any non-profit corporation organized under the laws of this state for charitable purposes.”

The NRA is a trustee under section 8-1.4 of the EPTL.

¹² NYSCEF Doc. No. 646, at 160-174 (Causes of Action) ¶¶ 635-704; and 174-76 (Prayer for Relief) ¶¶ A-J.

¹³ NYSCEF Doc. No. 646, at 160-62 (First Cause of Action) ¶¶ 635-643; and 175 (Prayer for Relief) ¶¶ A, B and C.

Under section 8-1.4(i), the Attorney General “may investigate transactions and relationships of trustees for the purpose of determining whether or not property held for charitable purposes has been and is being properly administered.”

Under section 8-1.4(m) of the EPTL, the Attorney General may commence a proceeding “to secure compliance with this section and to secure the proper administration of any trust, corporation or other relationship to which this section applies.”

The NRA, acting through its fiduciaries, trustees, officers, directors, *de facto* directors and officers, employees, staff, or agents, including, but not limited to, the Individual Defendants, has failed to properly administer charitable assets for the reasons outlined herein, including, among other things, it:

- a. Failed to supervise or take appropriate disciplinary action against the Individual Defendants and others for the actions alleged herein, resulting in waste of the NRA’s charitable assets, violation or evasion of the NRA’s bylaws, policies, procedures and internal controls;
- b. Made material false statements in its filings with the Attorney General;
- c. Failed to comply with the applicable law governing conflicts of interest, related-party transactions and self-dealing;
- d. Failed to comply with the applicable law governing whistleblower protections; and
- e. Permitted violations of the NRA’s bylaws and internal policies and procedures.

The NRA’s conduct outlined herein has resulted in improper administration and diminution of property held for charitable purposes because, among other things, it:

- a. Resulted in waste and diversion of charitable assets stemming from the Individual Defendants’ and others’ breaches of fiduciary duty and other unlawful conduct;
- b. Resulted in violations of the NRA’s bylaws and internal policies and procedures designed to prevent the waste or diversion of charitable assets;

c. Resulted in retaliation against whistleblowers in violation of the law designed to allow whistleblowers to report corruption including waste or diversion of charitable assets;

d. Resulted in harm to the public's and NRA members' faith in the proper administration of charitable assets.

Because of the above acts and omissions, the NRA and its assets were improperly administered under section 8-1.4 of the EPTL. Therefore, to secure the proper administration of the NRA, *the Attorney General seeks injunctive relief, including without limitation the appointment of an independent compliance monitor with responsibility to report to the Attorney General and the Court; the appointment of an independent governance expert to advise the Court on reforms necessary to the governance of the NRA to ensure the proper administration of charitable assets; directing the NRA to implement such governance reforms as the Court deems necessary ensure the proper administration of charitable assets and such other and further relief that the Court deems appropriate.*¹⁴

12. In her Second Cause of Action, "For Breach of Fiduciary Duty Under N-PCL §§ 717 and 720 and Removal Under N-PCL §§ 706(d) and 714(c) (Against Defendant LaPierre),"

the Attorney General alleges:

The Attorney General repeats and re-alleges the allegations set forth in paragraphs 1 through 643 above as though fully set forth herein.

LaPierre breached his fiduciary duties of loyalty, care and obedience to the NRA by using his powers as an officer and ex officio director of the NRA to obtain illegal compensation and benefits, to convert NRA funds for his own benefit, and to dominate, control, and direct the NRA to obtain private benefit for himself, his family members and for certain other insiders, including Defendants Phillips and Powell in contravention of NRA bylaws, policies and procedures, and applicable laws.

LaPierre's breaches of fiduciary duty have damaged the NRA by, among other things, causing its assets to be diverted for non-NRA purposes and be wasted and by exposing the NRA to liability for failure to report taxable income, failure to withhold payroll taxes, failure to report and pay excise taxes due pursuant to Section 4958 of the Internal Revenue Code, and jeopardizing the NRA's tax exempt status and authority to conduct business for failure to comply with regulatory reporting obligations.

¹⁴ NYSCEF Doc. No. 646, at 160-62 (First Cause of Action) ¶¶ 635-643.

Accordingly, LaPierre is liable under N-PCL § 720(a)(1) to account and pay restitution and/or damages, including returning the salary he received while breaching his fiduciary duties to the NRA, plus interest at the statutory rate of 9%, and rescission of any agreements providing for compensation following his employment as Executive Vice President of the NRA, for his conduct in the neglect and violation of his duties in the management and disposition of the NRA's charitable assets and in causing loss and waste of those assets by his breaches of fiduciary duty.

LaPierre should be removed for cause under N-PCL §§ 706 and 714 and be barred from re-election of reappointment as a director or officer of the NRA.¹⁵

13. In her Sixth Cause of Action, “For Breach of EPTL § 8-1.4 (Against Defendant LaPierre),” the Attorney General alleges:

The Attorney General repeats and re-alleges the allegations set forth in paragraphs 1 through 661 above as though fully set forth herein.

Section 8-1.4(m) of the EPTL authorizes the Attorney General to institute appropriate proceedings to secure the proper administration of any not-for-profit corporation organized under the laws of this State for charitable purposes.

LaPierre, in his capacity as the Executive Vice President of the NRA was a trustee pursuant to EPTL § 8-1.4 because he held and administered property for charitable purposes in the State of New York.

As set forth in the preceding paragraphs, LaPierre failed to administer the charitable assets of the NRA entrusted to his care properly and, as a result, should be ordered to account for his breaches and to make restitution and/or pay damages, plus interest at the statutory rate of 9%, to the NRA,” and, in addition, that “LaPierre should be permanently barred from serving as an officer, director or trustee of any not-for-profit or charitable organization incorporated or authorized to conduct business in the State of New York.¹⁶

14. In her Tenth Cause of Action, for “Wrongful Related-Party Transaction – N-PCL §§ 112(a)(10), 715(f) and EPTL § 8-1.9(c)(4) (Against Defendant LaPierre),” the Attorney General alleges:

¹⁵ NYSCEF Doc. No. 646, at 162-63 (Second Cause of Action) ¶¶ 644-648.

¹⁶ NYSCEF Doc. No. 646, at 166 (Sixth Cause of Action) ¶¶ 662-665.

The Attorney General repeats and re-alleges the allegations set forth in paragraphs 1 through 677 above as though fully set forth herein.

As described in detail in the preceding paragraphs, LaPierre caused the NRA to enter into a post-employment contract and amendments thereto as described above (collectively, the “LaPierre Post Employment Contract”) in which he had a financial interest without obtaining authorization from the Board or a determination by the Board that the transaction was fair, reasonable and in the NRA’s best interest at the time of the transaction.

LaPierre’s conduct was willful and intentional with respect to the Post Employment Contract in that as an officer of the NRA, he fully understood and intended the financial benefits he would derive from the transaction.

By the foregoing acts and omissions, LaPierre is liable under N-PCL 715(f) and EPTL § 8-1.9(c), to account for profits from the LaPierre Post Employment Contract not already accounted for; to the extent not already paid, pay the NRA the value of charitable assets used in the LaPierre Post Employment Contract; return assets lost to the NRA as a result of the Post Employment Contract, to the extent not already returned; pay the NRA an amount up to double the value of the amount of each benefit improperly bestowed by the LaPierre Post Employment Contract; and should be enjoined from serving as an officer, director or trustee, or in any similar capacity, of any not-for-profit charitable organization incorporated or authorized to conduct business or solicit charitable donations in the State of New York.¹⁷

15. In her new Prayer for Relief, the Attorney General requests judgment against the defendants for the following relief:

- A. Declaring that the NRA has failed to properly administer charitable assets, and appointing an independent ***compliance monitor*** with responsibility to report to the Attorney General and the Court to ensure the proper administration of the charitable assets pursuant to EPTL § 8-1.4;
- B. Appointing an independent ***governance expert*** to advise the Court on reforms necessary to the NRA’s governance to ensure the proper administration of charitable assets pursuant to EPTL § 8-1.4;
- C. Directing the NRA to implement such ***governance reforms*** as the Court deems necessary to ensure the proper administration of charitable assets pursuant to EPTL § 8-1.4;
- D. Removing LaPierre for cause from his position as Executive Vice President of the NRA, and permanently barring his re-election or

¹⁷ NYSCEF Doc. No. 646, at 169 (Tenth Cause of Action) ¶¶ 678-681.

appointment as an NRA officer or director pursuant to N-PCL §§ 706(d), 714(c), and 717 and EPTL § 8-1.4;

- E. Removing Frazer for cause from his position as General Counsel and Secretary of the NRA, and permanently barring his re-election or appointment as an NRA officer or director pursuant to N-PCL §§ 706(d), 714(c), and 717, EPTL § 8-1.4, and Executive Law § 175(2)(d);
- F. Permanently barring the Individual Defendants from serving as officers, directors, or trustees of any not-for-profit or charitable organization incorporated or authorized to conduct business or solicit charitable donations in the State of New York pursuant to EPTL § 8-1.4;
- G. Directing the Individual Defendants *to account for their conduct* in failing to perform their duties in managing the NRA's charitable assets; to pay full restitution to the NRA for the waste and misuse of its charitable assets, including the return of salary received while breaching their fiduciary duties to the NRA, plus interest at the statutory rate; and to pay damages to the NRA arising from the breach of fiduciary duties pursuant to N-PCL §§ 720 and EPTL § 8-1.4;
- H. Enjoining, voiding or rescinding the related party transactions entered into or proposed by Defendants; directing the Individual Defendants to account for profits made from and the value of the charitable assets used in those transactions, to the extent not already paid; and due to their willful and intentional conduct as alleged, directing the Individual Defendants to pay the NRA an amount up to double the value of each benefit improperly bestowed by such transactions occurring after July 1, 2014 pursuant to pursuant to [sic] N-PCL §§ 112(a)(10), 715(f) and EPTL § 8-1.9(c)(4);
- I. Enjoining the NRA and Frazer from soliciting or collecting funds on behalf of any charitable organization operating in this State pursuant to Executive Law § 175(2)(d);
- J. Directing the Individual Defendants to pay the NRA restitution for all excessive, unreasonable, and excess benefits that were paid to and *unjustly enriched* the Individual Defendants in violation of law and NRA bylaws and policies. ***¹⁸

16. On June 2, 2022, an entity search of the Department of State, Division of Corporations' "Corporation and Business Entity Database" was conducted using the entity name:

¹⁸ NYSCEF Doc. No. 646, at 174-76 (Prayer for Relief) (emphasis added).

“The National Rifle Association of America, Inc.” and a report was generated by the Department of State, Division of Corporations, entitled “Entity Search Results.” The report stated: “No business entities were found”. A true and correct copy of the first Entity Search Results is attached hereto as Exhibit 1.

17. That same day, a second search of the database was conducted using the name “National Rifle Association of America” and a report was generated by the Department of State, Division of Corporations, showing that the “National Rifle Association of America” is an active domestic not-for-profit corporation. A true and correct copy of the second Entity Search Results is attached hereto as Exhibit 2.

18. On June 3, 2022, another entity search was conducted by a representative of the Department of State, Division of Corporations, in which the database was searched again using the entity name: “The National Rifle Association of America, Inc.” and the representative reported that the database contains no record of any such entity.

19. Attached hereto as Exhibit 3 is a true and correct copy of the Certificate of Incorporation for the National Rifle Association of America.

20. Attached hereto as Exhibit 4 is a true and correct copy of an excerpt from the Office of the New York State Attorney General, Charities Bureau Guidance, including the following guidance issued in September 2018, stating:

Transactions related to compensation of employees, officers or directors or reimbursement of reasonable expenses incurred by a related party on behalf of the corporation are not considered related party transactions, unless that individual is otherwise a related party based on some other status, such as being a relative of another related party. However, such transactions must be reasonable and commensurate with services performed, and the person who may benefit may not participate in any board or committee deliberation or vote concerning the compensation (although he or she may be present before deliberations at the

request of the board in order to provide information).¹⁹

C. LaPierre Moves to Dismiss the Second Amended Complaint on the Ground that the Attorney General Lacks the Legal Capacity to Sue Him for Relief Other than the Relief Provided in Section 720 of the N-PCL, that the Attorney General Is Barred by the Law of the Case from Continuing to Seek Relief on a Theory of Unjust Enrichment, and that the Court Should Not Proceed in the Absence of the National Rifle Association of America, Who Should Be a Party.

21. To address the defects in the Attorney General's new pleading, LaPierre moves under CPLR 3211(a)(1), (2), (3), (7) and (10) to dismiss the Second Amended Complaint on the ground that the Attorney General lacks the legal capacity to sue him for relief other than the relief provided in section 720 of the Not-for-Profit Corporation Law, that the Attorney General is barred by the law of the case from continuing to seek relief on a theory of unjust enrichment, and that the court should not proceed in the absence of the National Rifle Association of America, who should be a party.

III.

CONCLUSION

22. Based on the foregoing, LaPierre respectfully submits that his motion to dismiss the Second Amended Complaint should be granted.

Executed this 6th day of June 2022 in New York, New York.

/s/ P. Kent Correll

P. Kent Correll

¹⁹ See Office of the New York State Attorney General Charities Bureau, Charities Symposium: Doing Well While Doing Good, Conflicts of Interest Policies under the Not-For-Profit Corporation Law at 7 (Sept. 2018) available at (<https://www.charitiesnys.com/pdfs/sympguidance.pdf>) and Exhibit 5 (Relevant portions of Office of the New York State Attorney General, Charities Bureau, Conflicts of Interest Policies Under the Not-for-Profit Corporation Law, Guidance Document, Issue date: September 2018) at 43 (italics added).

CERTIFICATE OF COMPLIANCE

I, P. Kent Correll, an attorney duly admitted to practice law before the courts of the State of New York, certify that the Affirmation of P. Kent Correll, Esq. complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because the Affirmation contains 3,548 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this affirmation.

Dated: New York, New York
June 6, 2022

/s/ P. Kent Correll

P. Kent Correll

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically served via the Court's electronic case filing system upon all counsel of record on this 6th day of June 2022.

/s/ P. Kent Correll
P. Kent Correll