

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
CASE TYPE: Other Civil

Ethylon B "E.B." Brown, Benjamin E. Myers,
Robert "Bob" Scott, Shannon Hartfiel, Robert
Wilson, William J. Brown, Dokor Dejvongsa,
Steve Jackson, DeEtte Davis, Tamara Hardy,
Lafayette Butler, Jernel McLane, Frank Essien,
Kenya Weathers, and Jerry Moore,

Court File No.: 27-CV-09-2277

Plaintiffs,

v.

Michael "Kip" Browne, P.J. Hubbard, Robert
Hodson, Ann McCandless, Don Samuels (in
his individual and official capacities), Barbara
Johnson (in her individual and official
capacities), Michael Martin (in his individual
and official capacities), City of Minneapolis,
Minnesota, Stacy Sorenson, an Unknown
Minneapolis "City Attorney John Doe
Defendant #1," and John Does 2-5,

Defendants.

**MEMORANDUM OF LAW
IN SUPPORT OF JOINT DEFENDANTS'
MOTION TO DISMISS FOR FAILURE
TO EXHAUST ADMINISTRATIVE
REMEDIES**

INTRODUCTION

Plaintiffs' lawsuit ignores the well-settled law in Minnesota that, in the absence of the aggrieved party exhausting his or her administrative remedies, injunctive relief is improper.¹ *Dodge v. Cedar-Riverside Project Area Committee*, 443 N.W.2d 844, 848 (Minn. Ct. App. 1989).² "A plaintiff's failure to pursue administrative remedies deprives the district court of subject-matter jurisdiction until the administrative remedies are exhausted." *See Nw. Airlines, Inc. v. Metro. Airports Comm'n*, 672 N.W.2d 379, 385 (Minn. Ct. App. 2003) (district court

¹ Joint Defendants raised this argument in their Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order, dated February 17, 2009. The Court did not address this argument in the March 11, 2009 Order.

² *See* Affidavit of Tara Reese Duginske, Exhibit A.

properly dismissed claim for lack of subject-matter jurisdiction where appellant failed to exhaust administrative remedies). In this case, plaintiffs knowingly disregarded a contractually mandated grievance process. Thus, pursuant to Minn. R. Civ. P. 12.02(a), the Court must dismiss plaintiffs' claims for lack of subject matter jurisdiction.

BACKGROUND

Plaintiffs claim that a "rogue" team has "staged" a coup and unlawfully claimed to be "officers, and the Executive Committee" of the Jordan Area Community Council ("JACC"). (Compl. ¶¶ 17-20.) Plaintiffs sued defendants Michael "Kip" Browne ("Browne"), P.J. Hubbard ("Hubbard"), Robert Hodson ("Hodson"), Anne McCandless ("McCandless"), Stacy Sorenson ("Sorenson"), the Minneapolis Neighborhood Revitalization Project ("NRP") and the JACC ("Joint Defendants"), and sought a temporary restraining order. On March 11, 2009, this Court denied plaintiffs' request. (Order, p. 8.) Plaintiffs have yet to exhaust their administrative remedies and continue to impermissibly seek injunctive relief.

ARGUMENT

I. ADMINISTRATIVE REMEDIES EXIST

The City of Minneapolis (“City”) entered into annual contracts with JACC for the provision of citizen participation services. *See* Duginske Aff., Ex. B. The Citizen Participation Program guidelines require neighborhood organizations to adopt and follow by-laws and have a grievance procedure by which its members may have their concerns addressed by the organization. (*Id.*) The Citizen Participation Program guidelines contain the grievance procedure for which such complaints are to be investigated by the City. *See* Duginske Aff., Ex. C. Bob Cooper (“Cooper”) of the Citizen Participation Department of the Community Planning and Economic Department (“CPED”) handles the grievances for each of the City’s Citizen Participation Programs, including JACC. (*Id.*)

Additionally, NRP’s Policy Manual also contains a grievance procedure for complaints concerning the NRP process in a neighborhood or grievances against staff of NRP. *See* Duginske Aff., Ex. D. The grievance procedures pursuant to CPED and NRP are mandatory, contractual requirements that have not been followed in this case. (*Id.*) Instead of adhering to the well-established grievance protocol, plaintiffs instead chose to pursue this unwarranted litigation.

In *Dodge*, a case involving strikingly similar allegations of a nonprofit neighborhood organization (“PAC”) conducting an illegal election, residents of the Cedar Riverside Area brought an action seeking injunctive relief “to restrain any actions of the newly elected board . . . and to restrain PAC from engaging in certain ultra vires acts.” 443 N.W.2d at 846. The trial court denied the motion for injunctive relief, holding that the plaintiffs failed to exhaust their administrative remedies, which included abiding by the contractual grievance procedure. *Id.* at 847.

Despite plaintiffs' complaints that "no channels" existed to air their grievances, the court held that the evidence demonstrated an adequate remedy at law. *Id.* The court pointed to a letter from Cooper of the Citizen Participation Department of the Minneapolis Community Development Agency ("MCDA")³, the agency to which the PAC reported, which stated:

The MCDA Citizen Participation Department did not receive any complaints regarding the Cedar-Riverside PAC's most recent election. If we were to have received a complaint we would have investigated it and taken any action that might have been deemed appropriate. **If a neighborhood group were to violate its by-laws** by not giving proper notice for an election, or any other violation, **the MCDA would most likely require that a new election be held.** This was the case with the Seward Neighborhood Group several years ago.

Id. (emphasis in original).

The *Dodge* plaintiffs, therefore, were required to notify the MCDA of their concerns that the neighborhood group violated its by-laws. *Id.* The court of appeals affirmed, holding the plaintiffs "fail[ed] to exhaust [their] administrative remedies before seeking an injunction." *Id.* at 848.

In this case, plaintiffs similarly failed to follow the mandatory grievance process, which happens to be the same grievance process discussed in *Dodge*. According to Cooper (who continues to be employed at CPED), "there does exist an administrative process for the review of grievances against neighborhood organizations...no grievances have been filed with the City against JACC as a result of any actions taken at the JACC board meeting of January 14, 2009." *See Duginske Aff., Ex. A.* The Citizen Participation Board Contract, contains the following grievance protocol:

³ The MCDA is now the entity referred to as CPED.

D. Grievances Against Contracted Neighborhood Groups

Any neighborhood resident, business owner, or property owner may file a grievance against a neighborhood group with CPED if the following conditions are met:

1. the grievance is within the jurisdiction of the City's citizen participation contract with the neighborhood group;
2. the person filing the grievance is a member of, or eligible for membership in, the organization, or is otherwise directly affected by the actions of the organization; and
3. the person filing the grievance has formally brought the issue to the attention of the neighborhood group in a timely manner and given the organization a chance to respond.

A grievance must be submitted in writing to the Development Finance Division (DFD) of the Finance Department. Upon receipt of the grievance, DFD will undertake an investigation of the complaint and prepare a report of its findings for CPED. A formal response to the grievance will be issued within 45 days of its initial receipt. This response will include the findings of the investigation and a proposed resolution to the grievance.

If the person filing the grievance or the affected neighborhood group is unsatisfied with the department's findings or resolution, they may appeal the matter to the CPED Director. Such an appeal must be received within thirty days of the official response and a Dispute Resolution Meeting will be held within 14 days of the appeal.

If any party is still unsatisfied, a mutually agreed upon third party will be selected to hear the complaint.

See Duginske Aff., Ex. C.

In sum, under the Citizen Participation Contract, plaintiffs were obligated to file their grievance with CPED prior to pursuing legal action. Plaintiffs were clearly familiar with this grievance process. For example, Plaintiff Benjamin Myers⁴ threatened to file a grievance in his January 17, 2009 correspondence with Joint Defendants. *See Duginske Aff., Ex. F.* Myers'

⁴ Myers claims he is on the JACC Board of Directors as Vice Chair. Prior to the January 14, 2009 election, Myers served as the Board Vice Chair. *See Duginske Aff., Ex. E* at 175:2-13.

letter states: "be advised that I am formally filing a grievance against all of you in accordance with my concerns outlined herein[.]" (*Id.*) Plaintiffs, however, did not follow the grievance protocol acknowledged by Myers and of which most of the plaintiffs and defendants had participated in the past. *See Duginske Aff., Ex. G.* Instead, plaintiffs inexplicably chose to ignore this condition precedent to bringing these claims. This litigation is premature because an administrative remedy exists. The Court, therefore, must dismiss all of plaintiffs' claims for lack of subject-matter jurisdiction in accordance with NRP and CPED mandatory grievance procedure protocol and *Dodge v. Cedar Riverside Project Area Committee*.

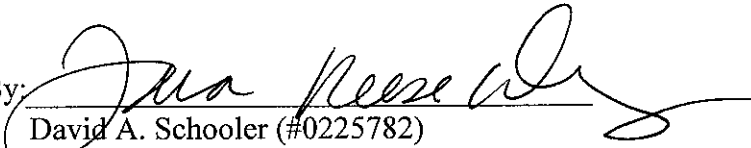
CONCLUSION

This litigation is an attempt by plaintiffs to circumvent the contractual grievance procedure and prematurely involve this Court with a dispute that it lacks jurisdiction to hear. Plaintiffs' efforts to seek injunctive relief prior to exhausting their administrative remedies is improper and contrary to law. Plaintiffs' claims must be dismissed for lack of subject matter jurisdiction.

Respectfully submitted,

Dated: May 11, 2009

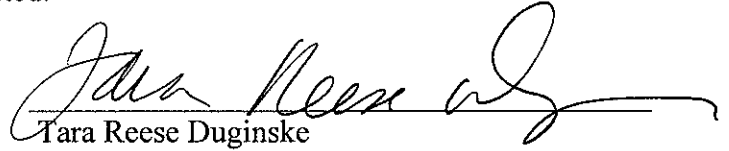
BRIGGS AND MORGAN, P.A.

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 1 to the party against whom the allegations in this pleading are asserted.


Tara Reese Duginske