IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ANTHONY BOVINO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2025-0691-BWD
	)	
HISTORIC RED CLAY VALLEY, INC.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION GRANTING MOTION TO DISMISS

Date Submitted: August 20, 2026
Date Decided: September 10, 2026

Andrew Silverman, MACELREE HARVEY, LTD., Centreville, DE; *Attorneys for Plaintiff Anthony Bovino*.

R. Eric Hacker, MORRIS JAMES LLP, Wilmington DE; *Attorneys for Defendant Historic Red Clay Valley, Inc.*

DAVID, V.C.

The plaintiff in this action brings claims seeking to compel an annual meeting to elect directors, contest the election of directors at a prior annual meeting, and challenge the validity of bylaws adopted by Historic Red Clay Valley, Inc., a Delaware nonstock, nonprofit corporation that operates tourist trains between Greenbank and Hockessin, Delaware.

The corporation has moved to dismiss the plaintiff's complaint for lack of standing on the basis that its board of directors adopted a resolution in March 2026 terminating the plaintiff's membership in the corporation. In response, the plaintiff argues that (1) the board resolution purporting to terminate his membership was ineffective because the directors who adopted it were invalidly elected at the corporation's last annual meeting; and (2) the plaintiff's removal was inequitable.

As set forth herein, these arguments fail to cast doubt on the validity of the board resolution terminating the plaintiff's membership. Because the plaintiff lacks standing to assert his claims, the motion to dismiss is granted.

I. BACKGROUND[1]

A. The Corporation And The Charter

Defendant Historic Red Clay Valley, Inc. (the "Corporation") is a Delaware nonstock, nonprofit corporation that operates tourist trains between Greenbank and Hockessin, Delaware. Am. Compl. ¶¶ 5–6. Plaintiff Anthony Bovino ("Plaintiff") purports to be a member of the Corporation. *Id.* ¶ 4.

The Corporation is governed by the Certificate of Incorporation of Historic Red Clay Valley, Inc. (the "Charter"). Hacker Aff., Ex. A [hereinafter Charter]. The Charter provides that "[t]he corporation shall not have any capital stock" and "the conditions of membership shall be stated in the By-Laws." *Id.* § 4; *see also* 8 *Del. C.* § 102(a)(4) ("The conditions of membership, or other criteria for identifying members, of nonstock corporations shall . . . be stated in the certificate of incorporation or the bylaws.").

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[1] The following facts are taken from the Amended Verified Complaint Pursuant to 8 *Del. C.* §§ 215(d) and 225 (the "Amended Complaint") and documents incorporated by reference therein. Am. Verified Compl. Pursuant to 8 *Del. C.* §§ 215(d) and 225 [hereinafter Am. Compl.], Dkt. 20; *see Freedman v. Adams*, 2012 WL 1345638, at *5 (Del. Ch. Mar. 30, 2012) (footnote omitted) ("When a plaintiff expressly refers to and heavily relies upon documents in her complaint, these documents are considered to be incorporated by reference into the complaint; this is true even where the documents are not expressly incorporated into or attached to the complaint."), *aff'd*, 58 A.3d 414 (Del. 2013). The Amended Complaint incorporates by reference the Corporation's governing documents as well as the Notice and Resolution (defined below). *See* Am. Compl. ¶¶ 6–10, 18–22, 25, 13; *see also* Transmittal Aff. of R. Eric Hacker, Esq. in Supp. of Def.'s Mot. to Dismiss [hereinafter Hacker Aff.], Exs. A–G, Dkt. 21.

The Charter further provides that "[t]he activities and affairs of the corporation shall be managed by a Board of Directors." Charter § 8. The Corporation's board of directors (the "Board") "shall be elected by the members at the annual meeting of the corporation to be held on such date as the by-laws may provide." *Id.* The Charter "expressly authorize[s]" the Board "to make, alter or repeal the by-laws of this corporation." *Id.* Under the Charter,

> This corporation may in its by-laws confer powers upon its Board of Directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon them by the statute, provided that the Board of Directors shall not exercise any power or authority conferred herein or by statute upon the members.

Id. The only power or authority conferred on members in the Charter is the power to elect directors to the Board. *Id.*

B. The 2010 Bylaws

The Board amended the Corporation's bylaws in December 2010 (the "2010 Bylaws"). Am. Compl. ¶ 9; Hacker Aff., Ex. B [hereinafter 2010 Bylaws]. Article I, Section 1 of the 2010 Bylaws addressed qualifications for membership, explaining that "[m]embership in [the Corporation] . . . shall be open to those persons who have manifested an interest in any one or more of the objectives and purposes of the Corporation" and "[m]embership applications shall be subject to review and approval by the Board of Directors." 2010 Bylaws, Art. I § 1. Article I, Section 2 of the 2010 Bylaws permitted the Board to suspend or terminate members with or without cause:

> All the rights, powers and privileges of any member of the Corporation shall cease upon his/her death or resignation. Any member of the Corporation can be suspended, or his/her membership can be terminated, with or without cause, by appropriate action of the Board of Directors, after giving such member thirty (30) days written notice of such proposed action by the Board of Directors. The decision of the Board as to suspension or termination of membership shall be final.

Id. at Art. I § 2.

Article II, Section 1 of the 2010 Bylaws provided that "[t]he annual meeting of the Corporation shall be held each year" and "[a]t each annual meeting, the members entitled to vote shall elect Directors of the Corporation to fill expiring terms." *Id.* at Art. II § 1; *see also id.* at Art. II § 5 ("Each membership shall be entitled to one vote at all meetings of the Corporation . . . .").

Under Article XII, Sections 1 and 2, the 2010 Bylaws could be amended "by two-thirds (2/3) majority vote of the members present" at a "duly constituted annual or special meeting" or "by a majority vote of the whole Board of Directors." *Id.* at Art. XII §§ 1, 2.

C. The 2020 Bylaws

The Board amended the Corporation's bylaws again in July 2020 (the "2020 Bylaws"). Am. Compl. ¶ 10; Hacker Aff., Ex. C [hereinafter 2020 Bylaws]. Member qualifications and the Board's ability to suspend or terminate members under Article I, Sections 1 and 2 remained unchanged. *See* 2020 Bylaws, Art. I §§ 1–2.

Article II, Section 1 of the 2020 Bylaws continued to provide that "[t]he annual meeting of the Corporation shall be held each year," but the 2020 Bylaws removed language stating that "the members entitled to vote shall elect Directors of the Corporation to fill expiring terms." *Id.* at Art. II § 1; *compare* 2010 Bylaws, Art. II § 1. Article II, Section 5 of the 2020 Bylaws was amended to state that "[e]ach Board of Director shall be entitled to one vote at all meetings of the Corporation." 2020 Bylaws, Art. II § 5; *compare* 2010 Bylaws, Art. II § 5.

Article XII was also amended to remove the members' ability to amend the 2020 Bylaws. *See* 2020 Bylaws, Art. XII; *compare* 2010 Bylaws, Art. XII.

D. Plaintiff Files An Action Under Section 215(d) And The Corporation Holds An Annual Meeting To Elect Directors.

On June 5, 2025, Plaintiff sent a letter to the Corporation demanding that it hold an annual meeting to elect directors to the Board. Am. Compl. ¶ 17. On June 15, Plaintiff initiated this action through the filing of a Verified Complaint (the "Initial Complaint"). Verified Compl. Pursuant to 8 *Del. C.* § 215(d) [hereinafter Initial Compl.], Dkt.1. The Initial Complaint alleged a single count under Section 215(d) of the Delaware General Corporation Law ("DGCL") seeking to compel the Corporation to set a date for an annual meeting of members. *Id.* at ¶¶ 12–16.

In August 2025, the Board sent notice of an annual meeting to elect directors (the "2025 Annual Meeting") to at least some of the Corporation's members (the "Notice"). Am. Compl. ¶ 18; Hacker Aff., Ex. D [hereinafter Notice]. The 2025 Annual Meeting took place on August 27. Am. Compl. ¶ 19. Plaintiff attended the meeting to object and asked to be excluded from the quorum count. *Id.* at ¶ 21. Ninety-seven members (representing 38.8% of the membership) were "[p]resent for [p]urposes of [q]uorum" and "[u]p to twelve additional members objected to the meeting but also participated during the open floor session of the meeting." Hacker Aff., Ex. E at 5. Seventy members voted and 15 individuals were elected to the Board. *Id.*; Am. Compl. ¶ 22. "Plaintiff denies that the [2025 Annual Meeting] constituted a valid annual meeting under the Corporation's Charter, bylaws, or Delaware law and denies that the directors purportedly elected at that meeting were validly elected." Am. Compl. ¶ 23.

E. The Board Terminates Plaintiff's Membership And Amends The Bylaws.

On March 25, 2026, the Board adopted a resolution purporting to terminate Plaintiff's membership in the Corporation under Article I, Section 2 of the Corporation's bylaws, effective April 24, 2026 (the "Resolution"). *Id.* at ¶ 25; Hacker Aff., Ex. F [hereinafter Resolution]. The Resolution explained that "the Corporation's membership roll identifies [Plaintiff] as a 'volunteer member,' a status that is contingent upon volunteer service with the Corporation," but Plaintiff "ha[d] not performed any volunteer service for the Corporation . . . since at least April 2025." Resolution at 1.

The same day, the Board amended the 2020 Bylaws (the "2026 Bylaws"). Am. Compl. ¶ 13; Hacker Aff., Ex. G. Plaintiff asserts that the 2026 Bylaws represent a significant departure from the governance structure in the Corporation's previous bylaws. Am. Compl. ¶ 13.

F. Plaintiff Amends His Complaint.

On May 12, 2026, Plaintiff filed the operative Amended Complaint. The Amended Complaint asserts four counts. Count I alleges a claim under 8 *Del. C.* § 215, seeking to compel the Corporation to set a date for an annual meeting to elect directors. Am. Compl. ¶¶ 34–38. Count II alleges a claim under 8 *Del. C.* § 225, challenging the validity of the directors elected at the 2025 Annual Meeting and the Resolution purporting to terminate his membership. *Id.* ¶¶ 39–42. Count III, labeled "Equitable Relief (Including Injunctive and Declaratory Relief)," seeks an order "enjoining enforcement of the . . . Resolution and the 2026 Bylaws, restoring and protecting Plaintiff's and the members' governance rights, and restoring the *status quo ante*, defined as the state of affairs existing immediately prior to the adoption of the . . . Resolution and the 2026 Bylaws." *Id.* ¶¶ 43–47. Count IV seeks a declaratory judgment that "the 2020 Bylaws and 2026 Bylaws are void and unenforceable to the extent they eliminate member voting rights for director elections or otherwise contravene the Charter and Delaware law." *Id.* ¶¶ 48–49.

On June 2, 2026, the Corporation moved to dismiss the Amended Complaint ("Motion to Dismiss"). Dkt. 21. The parties completed briefing on the Motion to Dismiss on July 13.[2] The Court heard oral argument on August 20. Dkt. 27.[3]

II. ANALYSIS

The Corporation has moved to dismiss the Amended Complaint under Court of Chancery Rule 12(b)(6) for failure to state a claim. It raises multiple arguments in support of dismissal, including that Plaintiff lacks standing to bring the claims in the Amended Complaint. "[W]here, as here, the issue of standing is so closely related to the merits, a motion to dismiss based on lack of standing is properly considered under Rule 12(b)(6) rather than Rule 12(b)(1)." *Appriva S'holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1285–86 (Del. 2007).

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[2] On June 2, 2026, the Corporation filed its opening brief in support of the Motion to Dismiss. Opening Br. in Supp. of Def. Historic Red Clay Valley, Inc.'s Mot. to Dismiss [hereinafter OB], Dkt. 21. On June 22, Plaintiff filed his answering brief in opposition to the Motion to Dismiss. Pl. Anthony Bovino's Resp. Br. in Opp'n to Def.'s Mot. to Dismiss [hereinafter AB], Dkt. 22. On July 13, the Corporation filed its reply brief in further support of the Motion to Dismiss. Def. Historic Red Clay Valley, Inc.'s Reply Br. in Supp. of Its Mot. to Dismiss [hereinafter RB], Dkt. 24.

[3] The August 20, 2026, oral argument transcript is cited as "Tr. at __". *See* Tr. of 8-20-2026 Oral Arg. on Def.'s Mot. to Dismiss, Dkt. 28.

When reviewing a motion to dismiss under Rule 12(b)(6), Delaware courts "(1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as 'well pleaded' if they give the opposing party notice of the claim, [and] (3) draw all reasonable inferences in favor of the non-moving party." *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002)).

The Corporation contends that Plaintiff lacks standing because he is no longer a member of the Corporation. Under Section 215(d) of the DGCL, "the Court of Chancery may summarily order . . . an election to be held upon the application of any *member* of the corporation." 8 *Del. C.* § 215(d) (emphasis added). Similarly, under Section 225(a), "[u]pon application of any [*member*] or director, or any officer whose title to office is contested, the Court of Chancery may hear and determine the validity of any election." 8 *Del. C.* § 225(a) (emphasis added); *see also Gassis v. Corkery*, 2014 WL 2200319, at *16 (Del. Ch. May 28, 2014) (explaining that if a "[p]laintiff is no longer a director, officer or member . . . he has no standing under Section 225"), *aff'd*, 113 A.3d 1080 (Del. 2015) (TABLE). And, if Plaintiff is no longer a member, he also cannot challenge the validity of the Corporation's governing documents because he lacks a "legally cognizable interest in [the] controversy." *Tunnell v. Stokley*, 2006 WL 452780, at *2 (Del. Ch. Feb. 15, 2006).

Although Plaintiff "continues to assert" his membership in the Corporation, the Corporation contends that Plaintiff's member status was validly terminated. Am. Compl. ¶ 4. On March 25, 2026, through the Resolution, the Board terminated Plaintiff's membership effective April 24, 2026, pursuant to Article I, Section 2 of either the 2010 Bylaws or 2020 Bylaws, which authorizes the Corporation to suspend or terminate a person's membership "with or without cause, by appropriate action of the Board of Directors, after giving such member thirty (30) days written notice of such proposed action by the Board of Directors." 2010 Bylaws, Art. I § 2; 2020 Bylaws, Art. I § 2; *see also* Resolution at 1.[4]

Plaintiff raises two primary arguments in response: (1) the Resolution was ineffective because the directors who adopted it were invalidly elected at the 2025 Annual Meeting; and (2) Plaintiff's removal was inequitable. Am. Compl. ¶¶ 40–41; AB at 14. Neither argument provides a basis to challenge the validity of the Resolution.

A. Plaintiff Fails To Adequately Challenge The Board's Authority To Remove Him.

Plaintiff first argues that the Resolution purporting to terminate his membership in the Corporation was ineffective because the directors who approved

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[4] The Corporation also asserts that its membership roll previously identified Plaintiff as a "volunteer member," and because Plaintiff has not volunteered for the Corporation since at least April 2025, he automatically ceased to be a member. OB at 4; Resolution at 1.

the Resolution were not validly elected at the 2025 Annual Meeting. Am. Compl. ¶¶ 35, 40; AB at 7–8. Plaintiff claims that the 2025 Annual Meeting "was conducted under disputed bylaws, with a disputed electorate and quorum." AB at 17. These arguments fail to cast doubt on the validity of the directors who approved the Resolution.

First, Plaintiff alleges that the 2025 Annual Meeting was invalid because it is not clear which set of bylaws—the 2010 Bylaws or the 2020 Bylaws—governed the meeting. *Id.* at 7 ("The governing bylaws and voting rules were disputed."). But Plaintiff concedes that if he is correct that the 2020 Bylaws were invalid, then the 2010 Bylaws should govern. Tr. at 29:5–30:3 ("[T]he 2010 bylaws should apply."). The Amended Complaint does not allege that the 2025 Annual Meeting failed to comply with the 2010 Bylaws. Under the 2010 Bylaws, members have the power to "elect [d]irectors of the Corporation to fill expiring terms,"[5] which is what occurred. Am. Compl. ¶¶ 18–22; Hacker Aff., Ex. E.

Second, Plaintiff argues that the "electorate" at the 2025 Annual Meeting was "disputed." AB at 1. Plaintiff's assertion that the Notice of the meeting was sent to "some, but not all, members of the Corporation," is wholly conclusory. Am. Compl. ¶ 18; AB at 7 ("Notice was not sent to all members."). The Complaint does not, for

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[5] Am. Compl. ¶ 9; 2010 Bylaws, Art. II § 1.

instance, identify any members who purportedly should have received the Notice but did not. Tr. at 21:23–22:24; Am. Compl. ¶ 18. Similarly, Plaintiff alleges that the 2025 Annual Meeting "inclu[ded] . . . individuals whose eligibility to vote had not been properly established,"[6] but has not explained who should not have voted but did, why those individuals were ineligible to vote, or how their participation affected the outcome of the election. Simply claiming a "dispute" over who was entitled to receive notice of and vote at the 2025 Annual Meeting, without more specificity, fails to meet even minimal notice pleading requirements.[7]

Third, Plaintiff argues that the quorum requirement for the 2025 Annual Meeting is also "disputed." AB at 7; *see also* Am. Compl. ¶¶ 21–22. The Amended Complaint does not allege facts suggesting that the 2025 Annual Meeting failed to satisfy a quorum by any measure. The 2010 Bylaws require 50 "current paid members," and the 2020 Bylaws require six directors, to reach a quorum. 2010 Bylaws, Art. II § 4; 2020 Bylaws, Art. II § 4. Both measures were satisfied. Additionally, Section 215(c) of the DGCL states that "[i]n the absence of . . .

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[6] Am. Compl. ¶ 21; AB at 7 ("The member list was not accurate.").

[7] At oral argument, Plaintiff argued that at the time of the 2025 Annual Meeting, the Corporation's "membership records were [in] doubt[]." Tr. at 25:5–6. Even if Plaintiff had not waived that argument by failing to plead or brief it, the Amended Complaint fails to allege any facts suggesting that reliance on the Corporation's available membership records was not a valid exercise of the Board's business judgment.

specification in the certificate of incorporation or bylaws of a nonstock corporation: (1) One-third of the members of such corporation shall constitute a quorum at a meeting of such members." 8 *Del. C.* § 215(c). This was satisfied, too. Thus, the Amended Complaint fails to allege facts supporting an inference that even the most stringent quorum requirement was not satisfied.

Finally, at oral argument, Plaintiff argued for the first time that the 2025 Annual Meeting was invalid because the Corporation's governing documents provide for a staggered Board, yet members voted on all 15 director seats at the meeting. Tr. at 26:13–23. Even if Plaintiff had not waived this argument by failing to plead or brief it, it is unclear why permitting members to vote on all director seats would render the election results invalid.

Because Plaintiff has not alleged any viable defect in the 2025 Annual Meeting, his attack on the directors who approved the Resolution terminating his membership fails.

B. Plaintiff Fails To Adequately Plead That Terminating His Membership Was Inequitable.

Plaintiff separately contends that the Resolution terminating his membership is invalid because it is inequitable. Am. Compl. ¶¶ 44–45; AB at 23 (citing *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971), for the proposition that "inequitable action does not become permissible simply because it is legally possible").

Because members do not hold property interests in a nonstock corporation, the members of "a non-stock charitable corporation . . . unlike stockholders of a for-profit corporation, have no vested interest in remaining members." *Kirby v. Kirby*, 1987 WL 14862, at *5 (Del. Ch. July 29, 1987), *aff'd sub nom. Oberly v. Kirby*, 592 A.2d 445 (Del. 1991). When a certificate of incorporation permits it, "directors may adopt bylaws governing admission to membership, duties and obligations of members, classification of members and expulsion from membership." *Id.* "Membership in voluntary associations is generally viewed as a privilege that may be withheld, not as a right that may be independently enforced." *Capano v. Wilm. Country Club*, 2001 WL 1359254, at *4 (Del. Ch. Nov. 1, 2001). "In rare cases where courts have scrutinized a [nonstock corporation's] expulsion by-laws, it was only to determine if the [corporation] complied with its own by-law procedures, or whether the by-laws violated general public policy, or if bad faith motivated the enforcement of the by-laws against the affected members." *Id.*

Here, the Amended Complaint does not allege that the Resolution terminating Plaintiff's membership failed to comply with the Corporation's governing documents. The Charter provides that "the conditions of membership shall be stated in the By-Laws," and both the 2010 Bylaws and 2020 Bylaws authorize the

Corporation to suspend or terminate a person's membership "with or without cause, by appropriate action of the Board of Directors, after giving such member thirty (30) days written notice of such proposed action by the Board of Directors." Charter § 4; 2010 Bylaws, Art. I § 2; 2020 Bylaws, Art. I § 2. The Resolution complied with those provisions. *See Haas v. Indian River Volunteer Fire Co., Inc.*, 2000 WL 1336730, at *4 (Del. Ch. Aug. 14, 2000) (finding a company acted in good faith when expelling a member, noting there was "no dispute that the Company's charter and bylaws confer [the] power . . . to expel members"), *aff'd*, 768 A.2d 469 (Del. 2001) (TABLE).

Plaintiff argues instead that the Board terminated his membership in bad faith "during the pendency of this action and for the primary purpose of interfering with Plaintiff's governance rights and access to judicial relief." Am. Compl. ¶ 44. According to Plaintiff, "a disputed Board [cannot] insulate its own conduct from review by eliminating the plaintiff's status after suit is filed." AB at 15. Critically, however, the Initial Complaint asserted a single claim seeking to compel an annual meeting to elect directors under Section 215 of the DGCL. Initial Compl. ¶¶ 12–16. The 2025 Annual Meeting occurred in August 2025, mooting that request. The newly elected Board adopted the Resolution terminating Plaintiff's membership on March 25, 2026, and Plaintiff did not amend his complaint to bring additional claims until weeks later, on May 12. It is not reasonable to infer that the reconstituted Board terminated Plaintiff's membership in a bad faith effort to impede his "access to judicial relief" when Plaintiff had no viable claims pending at the time of the termination. Am. Compl. ¶ 44; *see Gassis*, 2014 WL 2200319, at *14 (rejecting argument that a former director's removal was inequitable retaliation for a books and records demand when the removal was planned before the demand was sent).

Accordingly, the Amended Complaint fails to allege facts supporting a reasonable inference that Plaintiff's removal was inequitable.

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As set forth above, Plaintiff has failed to raise a viable challenge to the Resolution terminating his membership in the Corporation. As a non-member, Plaintiff lacks standing to bring claims under Sections 215 and 225 of the DGCL or to challenge the validity of the Corporation's governing documents.

III. CONCLUSION

For the reasons explained above, the Motion to Dismiss is granted for lack of standing. The Amended Complaint is dismissed in its entirety.