

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18260
C/hu

_____AD3d_____

Argued - January 11, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2006-11560

DECISION & ORDER

Morris Esformes, et al., appellants, v
Fred Brinn, et al., respondents.

(Index No. 5456/06)

Paul Savad, Nanuet, N.Y. (Susan Cooper of counsel), for appellants.

Catalano Gallardo & Petropoulos, LLP, Jericho, N.Y. (Ralph A. Catalano and
Tracy L. Frankel of counsel), for respondents.

In an action, inter alia, for a judgment declaring that the termination of the contract of nonparty Mordechai Tendler as the rabbi of the defendant Bais Knesses of New Hempstead, Inc., a/k/a Kehillat New Hempstead, The Rav Aron Jofen Community Synagogue is null and void, to reinstate him to his position, to declare null and void the elections of the Board of Directors and the Board of Trustees of the defendant Bais Knesses of New Hempstead, Inc., a/k/a Kehillat New Hempstead, The Rav Aron Jofen Community Synagogue, sued herein collectively as Board of Directors and Trustees of Bais Knesses of New Hempstead, Inc., a/k/a Kehillat New Hempstead, The Rav Aron Jofen Community Synagogue, and to direct that new elections be held, the plaintiffs appeal from an order of the Supreme Court, Rockland County (Leibowitz, J.), dated November 22, 2006, which denied their motion for a preliminary injunction, inter alia, enjoining the defendant Board of Directors and Trustees of Bais Knesses of New Hempstead, Inc., a/k/a Kehillat New Hempstead, The Rav Aron Jofen Community Synagogue from taking any action, except in the ordinary course of business.

ORDERED that the appeal from so much of the order as denied those branches of the plaintiffs' motion which were for a preliminary injunction as requested in items of relief numbered (2), (3), (4), (5), and (6) of the motion is dismissed as academic, without costs or disbursements; and it is further,

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ORDERED that the order is reversed insofar as reviewed, on the law, without costs or disbursements, and the matter is remitted to the Supreme Court, Rockland County, to determine on the merits that branch of the plaintiffs' motion which was for a preliminary injunction enjoining the defendant Board of Directors and Trustees of Bais Knesses of New Hempstead, Inc., a/k/a Kehillat New Hempstead, The Rav Aron Jofen Community Synagogue from taking any action except in the ordinary course of business.

In light of this Court's determination in companion appeals (*see Esformes v Brinn*, _____AD3d _____ [Appellate Division Docket Nos. 2007-06749, 2007-08127; decided herewith]), upholding the dismissal of the first, second, third, fourth, and sixth causes of action upon which those branches of the plaintiffs' motion which were for a preliminary injunction as requested in items of relief numbered (2), (3), (4), (5), and (6) of the motion were based, we dismiss as academic the appeal from so much of the order as denied those branches of the plaintiffs' motion (*see generally Malankara Archdiocese of Syrian Orthodox Church in N. Am. v Malankara Jacobite Ctr. of N. Am., Inc.*, 24 AD3d 626, 627).

The Supreme Court denied the motion for preliminary injunctive relief solely on the ground that it could not be decided by applying neutral principles of law and would require impermissible inquiries into religious doctrine. Thus, it did not reach, on the merits, inter alia, that branch of the plaintiffs' motion which was for a preliminary injunction as requested in item of relief numbered (1), to enjoin the Board of Directors and the Board of Trustees of the defendant Bais Knesses of New Hempstead, Inc., a/k/a Kehillat New Hempstead, The Rav Aron Jofen Community Synagogue, sued herein collectively as the defendant Board of Directors and Trustees of the Bais Knesses of New Hempstead, Inc., a/k/a Kehillat New Hempstead, The Rav Aron Jofen Community Synagogue, from taking any action except in the ordinary course of business, which relief was based on the fifth cause of action. Accordingly, in light of this Court's determination in the companion appeals reinstating the fifth cause of action, we remit the matter to the Supreme Court, Rockland County, to determine on the merits that branch of the motion which was for injunctive relief as requested in item of relief numbered (1) (*see Matter of Jones v Amicone*, 27 AD3d 465; *Katz v Katz*, 68 AD2d 536, 542-543).

MASTRO, J.P., SKELOS, FLORIO and DICKERSON, JJ., concur.

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DECISION & ORDER ON MOTION

Morris Esformes, et al., appellants, v
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Motion by the defendants, inter alia, to dismiss an appeal from an order of the Supreme Court, Rockland County, dated November 22, 2006. By decision and order on motion of this Court dated August 2, 2007, that branch of the motion which was to dismiss the appeal was held in abeyance and was referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the submission of the appeal, it is

ORDERED that the branch of the motion which was to dismiss the appeal is denied.

MASTRO, J.P., SKELOS, FLORIO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court