

Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD IAS TERM, PART 19

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YU-HSIUNG CHEN and YU-HUA HSU CHEN,

Index No: 26936/05

Plaintiffs,

Motion Date: 8/15/07

- against-

Motion Cal. No: 12

JOHN E. HAO, FAITH BIBLE, INC. and
FAITH BIBLE CHURCH,

Motion Seq. No.: 3

Defendants.
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The following papers numbered 1 to 10 read on this motion by defendants for an order dismissing the amended complaint in its entirety, pursuant to CPLR 3211, on the grounds that this Court lacks jurisdiction of the subject matter and plaintiffs fail to state a claim or cause of action for which this Court can grant relief.

	PAPERS NUMBERED
Notice of Motion-Affidavits-Exhibits.....	1 - 4
Affirmation in opposition-Exhibits.....	5 - 7
Reply Affirmation.....	8 - 10

Upon the foregoing papers, it is ordered that the motion is disposed of as follows:

This is an action commenced on December 15, 2005, by plaintiff Tu-Hsiung Chen (“Pastor Chen”), a former pastor of defendant Faith Bible Inc. and Faith Bible Church (“Faith Bible”), and his wife, plaintiff Yu-Hua Hsu Chen (“Mrs. Chen”), for damages based upon breach of contract and defamation against the Church and defendant John E. Hao (“Hao”), the Senior pastor of the Church. Issue was joined on or about May 23, 2006, a Note of Issue was filed on January 19, 2007, and by order dated March 27, 2007, this Court granted plaintiffs leave to serve a supplemental summons and an amended complaint to add a cause of action sounding in fraud. Defendants now move to dismiss the amended complaint on the grounds that this court lacks subject matter jurisdiction and that the complaint fails to state a cause of action.

Relevant Facts

Pastor Chen is a Christian minister with over 27 years of ministerial services following his receiving theological education with the China Evangelical Seminary and the Dallas Theological Seminary. On June 14, 2002, Pastor Chen, while on sabbatical leave from his ministerial position in Texas, received a written offer from defendant Hao to become a pastor of Faith Bible at a monthly salary of \$2,600.00. Included in this offer were the payment of relocation expenses for Pastor Chen and his wife, medical insurance for the Chen family, annual salary increases, and a promotion after a year of employment to the position of associate pastor. In July 2002, Pastor Chen, having accepted the offer, relocated with his family to New York and began his employment with Faith Bible. Some time thereafter, Pastor Chen became suspicious of Hao, who Pastor Chen perceived to be using Faith Bible as his “alter ego” and for his personal purposes. Notwithstanding the use of the Faith Bible facility to operate a restaurant, bookstore, after-school care center, summer day camp, and Chinese school, Pastor Chen alleges that Faith Bible maintained no financial, meeting, expense or bookkeeping records, and all profits from the various activities allegedly were retained by defendant Hao. Defendant Hao allegedly rebuked numerous requests by Pastor Chen to inspect the books of Faith Bible, and allegedly began searching for a “pretext” to terminate Pastor Chen’s employment. On November 18, 2005, defendant Hao terminated Pastor Chen’s employment in a termination letter that described him as a “false prophet,” “false teacher,” and “wolf wearing sheep’s skin.” Pastor Chen’s termination allegedly was the unilateral determination of Hao without the conduct of a meeting, and the termination letter allegedly was distributed to the congregation and various boards of Faith Bible. Pastor Chen further alleges that on November 20, 2005, the police was summoned when the Chen family went to Faith Bible to give farewells to the congregation, and they were forced to leave the premises. Thereafter, in December 2005, defendants allegedly ran an advertisement in the Chinese Religious Newspaper regarding Pastor Chen’s termination; Pastor Chen has been unsuccessful in obtaining any position in any churches since then.

Plaintiffs, in their amended complaint, assert five causes of action: the first cause of action alleges breach of the terms of the “job” letter; the second cause of action alleges wrongful termination; the third cause of action alleges defamation; the fourth cause of action alleges battery; and the fifth cause of action alleges misrepresentation. Defendants seek dismissal of the first, second, third and fifth causes of action for lack of subject matter jurisdiction, contending that the actions complained of are nonjusticiable under the ministerial exception to the First Amendment. They also seek dismissal of all causes of action on the ground that each fails to state a cause of action.

Subject Matter Jurisdiction

The threshold issue is whether this Court has jurisdiction to resolve the dispute at hand. “The First Amendment prohibits a civil court from conducting an inquiry into religious law, beliefs, or internal hierarchy (citations omitted), resolving disputes over a religious group's membership requirements (citations omitted), or inquiring into religious disputes (citations omitted).” Congregation Yetev Lev D'Satmar, Inc. v. Kahana, 31 A.D.3d 541 (2nd Dept. 2006). To avoid constitutional infringement upon the First Amendment right to freedom of religion, “courts should

take special care not to become involved in internal religious disputes or implicate secular interests in matters of purely ecclesiastical or religious concerns such as church governance or polity.” Trustees of Diocese of Albany v. Trinity Episcopal Church of Gloversville, 250 A.D.2d 282 (3rd Dept. 1999). However, as the Court of Appeals held in Park Slope Jewish Center v. Congregation B'nai Jacob, 90 N.Y.2d 517 (1997), in adopting and applying the “neutral principles of law” analysis for contract cases touching upon religious concerns, “courts are free to decide such disputes if they can do so without resolving underlying controversies over religious doctrine.” Id. at 521. As the “neutral principles of law” approach requires the court to apply objective, well-established principles of secular law to the issues, “judicial involvement is warranted when the case can be ‘decided solely upon the application of neutral principles of contract law, without reference to any religious principle.’” Islamic Center of Harrison, Inc. v. Islamic Science Foundation, Inc., 216 A.D.2d 357, 358, citing, Avitzur v. Avitzur, 58N.Y.2d 108, 115, cert. denied 464 U.S. 817. See, also, Kelley v. Garuda, 36 A.D.3d 593 (2nd Dept. 2007)[United States Supreme Court has recognized that there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded (internal citations omitted)]; Catholic Charities of Diocese of Albany v. Serio, 7 N.Y.3d 510, 522 (2006)[“The First Amendment prohibitions, however, do not prevent a court from adjudicating disputes involving religious entities if it may be done by applying 'neutral principles of law' and without resolving or impinging upon underlying controversies over religious doctrine].

Here, the Free Exercise Clause bars this Courts adjudication of Pastor Chen’s employment dispute with Faith Bible. See, Sam v. Church of St. Mark, 293 A.D.2d 663 (2nd Dept. 2002); Mays v. Burrell, 124 A.D.2d 714 (2nd Dept. 1986); see, also, Kraft v. Rector, Churchwardens and Vestry of Grace Church in New York, 2004 WL 540327 (S.D.N.Y. 2004). Thus, the first cause of action alleging breach of the terms of the “job” letter and the second cause of action alleging wrongful termination challenging Pastor Chen’s termination are nonjusticiable. As the Appellate Division, Second Department, stated in Sam v. Church of St. Mark, supra, a strikingly similar case:

The Supreme Court correctly determined that it lacked subject matter jurisdiction over the plaintiff's second cause of action to recover damages for breach of a contract of employment or wrongful termination of employment. The issue presented cannot be decided solely upon the application of neutral principles of law, and would require this court to pass upon the underlying dispute between the plaintiff and the defendants, the canonical law pursuant to which the plaintiff's pastoral relationship was terminated, and the determinations issued by the ecclesiastical tribunals. Thus, judicial resolution of the second cause of action would inexorably entangle this court in a religious controversy in violation of the Establishment Clause of the First Amendment of the United States Constitution (citations omitted).

The first and second causes of action must therefore be, and hereby are, dismissed.

Similarly, the third cause of action, alleging defamation, and fifth cause of action, alleging misrepresentation, that “Faith Bible was an institution solely dedicated to the worship of God and the benefit of its congregation,” also must be dismissed. In Mandel v. Silber, 304 A.D.2d 538 (2nd Dept. 2003), an action to recover damages for defamation, the Appellate Division, Second Department, stated:

The Establishment Clause of the First Amendment of the United States Constitution prohibits the courts from “interfering in or determining religious disputes “(citations omitted). Contrary to the plaintiff’s contention, this matter cannot be decided by application of neutral principles of law (citations omitted). Resolution of the parties’ dispute would necessarily involve an impermissible inquiry into religious doctrine and a determination as to whether the plaintiff violated religious law (citations omitted). Consequently, the Supreme Court properly dismissed the plaintiff’s cause of action alleging defamation.

And, in Lightman v. Flaum, 97 N.Y.2d 128, 137 (2001), a case cited in the Mandel decision, the Court of Appeals, earlier had ruled:

The United States Constitution protects the right of individuals to “believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs * * * [I]f those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain (United States v. Ballard, 322 U.S. 78, 86-87, 64 S.Ct. 882, 88L.Ed.1148). As we explained in a different context, civil courts are forbidden from interfering in or determining religious disputes. Such rulings violate the First Amendment because they simultaneously establish one religious belief as correct * * * while interfering with the free exercise of the opposing faction’s beliefs(First Presbyt. Church v. United Presbyt. Church, 62N.Y.2d 110, 116, 476 N.Y.S.2d 86, 464 N.E.2d 454, cert. denied 469 U.S. 1037, 105 S.Ct. 514, 83 L.Ed.2d 404; see also, Park Slope Jewish Ctr. v. Congregation B'nai Jacob, 90 N.Y.2d 517, 521, 664 N.Y.S.2d 236, 686 N.E.2d 1330; Avitzur v. Avitzur, 58 N.Y.2d 108, 114, 459 N.Y.S.2d 572, 446 N.E.2d 136, cert. denied 464 U.S. 817, 104 S.Ct. 76, 78 L.Ed.2d 88).

These cases clearly demonstrate that this Court lacks jurisdiction over the subject matter of these two causes of action, which can not be settled by the application of neutral principles of law, and do implicate matters of religious doctrine and practice. Cf, Berger v. Temple Beth-El of Great Neck, 303 A.D.2d 346 (2nd Dept. 2003); Sam v. Church of St. Mark, supra.

Failure to State a Cause of Action

Defendants move to dismiss the fourth cause of action sounding in battery on the ground that it fails to state a cause of action. The fourth cause of action alleges that “on or about November 20, 2005, defendants and/or defendants’ agents, associates or employees have jointly and severally, intentionally and/or gross-negligently, battered plaintiffs by physically touching, pushing and shoving Plaintiffs.” “On a motion to dismiss pursuant to CPLR 3211(a)(7), the pleading is to be afforded a liberal construction. The court must accept the facts alleged in the complaint as true, accord the plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” Kempf v. Magida, 37 A.D.3d 763 (2nd Dept. 2007), citing, Arnav Indus., Inc. Retirement Trust v. Brown, Raysman, Millstein, Felder &Steiner, 96 N.Y.2d 300, 303, (2001); Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994); Gallagher. Kucker & Bruh, 34 AD3d 419, 419 (2nd Dept 2006).

“To sustain a cause of action to recover damages for assault, there must be proof of physical conduct placing the plaintiff in imminent apprehension of harmful contact” (citations omitted). The elements of a cause of action [to recover damages] for battery are bodily contact, made with intent, and offensive in nature (citations omitted). Fugazy v. Corbetta, 34 A.D.3d 728 (2nd Dept. 2006). Application of these principles to the allegations contained in the complaint and affording the mandated liberal construction, that branch of defendants’ motion seeking dismissal of the fourth cause of action for failure to state a cause of action is denied. See, D’Alba v. Yong-Ae Choi, 33 A.D.3d 650 (2nd Dept. 2006).

Conclusion

Based upon the foregoing, defendants’ motion is granted to the extent that the first, second third and fifth causes of action hereby are dismissed based upon lack of subject matter jurisdiction.

Dated: September 24, 2007

J.S.C.