

Guice-Mills v The Riverside Church in the City of N.Y.
2007 NY Slip Op 32923(U)
September 7, 2007
Supreme Court, New York County
Docket Number: 0107574/2007
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUDITH J. GISCHE, J.S.C.

PART 10

Justice

Constance Guice-Mills

INDEX NO. 107574/07

Riverside Church In
The City OF NY

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

Motion decided in accordance with memorandum decision.

FILED
SEP 18 2007
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: Sept 7, 2007

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----X
CONSTANCE GUICE-MILLS,

Plaintiff,

-against-

THE RIVERSIDE CHURCH IN THE CITY
OF NEW YORK

Defendant.
-----X

Decision/Order

Index No.: 107574/07

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers

Pltf's OSC, CGM affid, exhs 1
Def's cross mot [dismiss], BEJ affid, memo, exhs 2

FILED
SEP 18 2007
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, the decision and order of the court is as follows:

Plaintiff has brought this action seeking an order appointing a temporary receiver for the defendant The Riverside Church in the City of New York (defendant or the "Church"), pursuant to CPLR § 6401(a), and requiring the Church to call a special meeting of the congregation to amend the Church's bylaws. The Church, located at 120th Street and Riverside Drive in Manhattan, cross moves, pre-answer, to dismiss the complaint pursuant to CPLR § 3211(a)(3) and (7). The Church also contends that plaintiff does not have standing to bring this action.

Plaintiff, a member of defendant, previously brought an Article 78 proceeding wherein she and several other church members sought the appointment of a receiver and an order for a special meeting. See Bynoe v. Riverside Church in the City of New York,

2006 NYSlipOp 26336 (N.Y. Co. Sup. Ct. 2006). That Article 78 petition was denied because: (1) petitioners were not entitled to a special meeting because they failed to provide proper notice; and (2) petitioners' application for a temporary receiver was not properly before the court.

The Church, as a not-for-profit corporation, is subject to the provisions of the Not-For-Profit Corporation Law. N-FPCL § 623 provides, in pertinent part:

"(a) An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by five percent or more of any class of members ...

"(b) In any such action, it shall be made to appear that each plaintiff is such a member ... at the time of bringing the action.

"(c) In any such action, the complaint shall set forth with particularity the efforts of the plaintiff or plaintiffs to secure the initiation of such action by the board [or" the reason for not making such effort."

Whether plaintiff is a proper party to bring this action is an aspect of justiciability which, when challenged, must be considered at the outset of any litigation. Society of Plastics Industry, Inc. v. County of Suffolk, 77 N.Y.2d 761 (1991).

The Church's membership is estimated at 2,500. Plaintiff commenced this action as an individual and has not made any assertions in either the complaint or the instant order to show cause that she represents the necessary requisite 5% or more of the members of the Church. Plaintiff has not complied with N-FPCL § 623. See Segal v. Powers, 180 Misc2d 57 (N.Y. Co. Sup. Ct. 1999). Therefore, plaintiff lacks standing to commence a derivative action against the Church seeking the appointment of a temporary receiver.

In addition, plaintiff has no right under the bylaws to compel a special meeting because she has failed to comply with Article IV Section 3 b. of the bylaws, which states:

"A special meeting of the Religious Corporation shall be called ... on the written request of at least 10 qualified members of the Religious Corporation. Notice of a special meeting shall specifically state the text of any resolution to be proposed at the meeting. ... No action can be taken at a special meeting except upon a resolution specifically set forth in the meeting notice."

Plaintiff requested a special meeting, via a proposed resolution dated October 12, 2006, without providing the text of the purported amendments to the bylaws. While the proposed resolution referred to an attachment containing proposed amendments to the bylaws, by letter dated October 24, 2006, plaintiff admitted she still had not provided such amendments. Nor was plaintiff's October 12, 2006 request for a special meeting supported by 10 members of the Church.

Accordingly, the Church's motion to dismiss the complaint is granted.

Conclusion

In accordance herewith, it is hereby:

ORDERED that the cross motion by defendant The Riverside Church in the City of New York is hereby granted and the complaint is dismissed; and it is further

ORDERED that plaintiff's motion for an order appointing a temporary receiver and requiring the Church to call a special meeting of the congregation is hereby rendered academic.

Any requested relief not expressly addressed has nonetheless been considered and is hereby denied.

This shall constitute the decision and order of the court.

Dated: New York, New York
September 7, 2007

So Ordered
HON. JUDITH J. GISCHÉ, J.S.C.

FILED
SEP 18 2007
NEW YORK
COUNTY CLERK'S OFFICE