

Committee to Save St. Brigid v Egan

2007 NY Slip Op 34473(U)

February 13, 2007

Supreme Court, New York County

Docket Number: 110443/06

Judge: Barbara R. Kapnick

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BARBARA R. KAPNICK
Justice

PART 12

Committee to Save St. Brigid's

INDEX NO. 160443/06

MOTION DATE _____

- v -

Edward Cardinal Egan

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED

FEB 13 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 2/13/07

BARBARA R. KAPNICK s.c.
J.G.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12**

-----X
COMMITTEE TO SAVE ST. BRIGID, EDWIN
TORRES, CATHERINE KING, NILSA FIOL,
and RUTH BURGOS,

Plaintiffs,

-against-

EDWARD CARDINAL EGAN, as Cardinal of
the Archdiocese of New York, and
CHURCH OF ST. BRIGID, and
PATRICIA J. LANCASTER, as Commissioner
of the New York City Department of
Buildings,

Defendants.

-----X
BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 110443/06
Motions Seq. Nos.
001 and 002

FILED
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NEW YORK
COUNTY CLERK'S OFFICE

Motions sequence numbers 001 and 002 are consolidated for disposition.

This action constitutes the second litigation before this Court concerning the future of the historic building located at 119 Avenue B in Manhattan which houses the Church of St. Brigid, formerly known as the Church of Saint Bridget ("the Church"), one of the oldest Roman Catholic churches in New York City.

The building was designed by the Irish-American Architect Patrick C. Keely and built by Irish shipwrights in 1848, during the large-scale immigration resulting from the Great Famine. Throughout its history, the Church served the Irish immigrant community and other largely immigrant communities of New York's Lower East Side.

The religious "Society" of "Saint Bridget" was formally incorporated under the Religious Corporations Law ("RCL") pursuant to a Certificate of Incorporation filed with the New York Secretary of State on or about March 4, 1869. The then "Trustees of The Church of St. Bridget" - i.e., the most Reverend Archbishop and the Vicar General of the Archdiocese of New York and the Pastor - unanimously adopted By-Laws at a meeting held on March 23, 1886. On or about October 30, 1940, Archbishop Francis Spellman (who was later elevated to Cardinal) conveyed the Church building and the associated land to the religious corporation.

In June 2001, Cardinal Egan visited the parish and ordered that the Church be closed because serious structural problems had made the Church building unsafe. The then pastor of the Church, Father Michael Conway, thereupon began celebrating Mass in the cafeteria of the parish school, adjacent to the Church, and also began a restoration fund which, the parties agree, eventually collected approximately \$103,000.

Plaintiffs Edwin Torres, Catherine King, Nilsa Fiol and Ruth Burgos were all parishioners of St. Brigid and allegedly contributed to the restoration fund in reliance on Father Conway's promise that the Church was going to be repaired.

In September 2003, the Archdiocese, through its architect, filed an application with the New York City Department of Buildings for the conversion of the Church into residential apartments. In

August 2004, Bishop Robert Brucato, the Vicar General for the Archdiocese, announced that the St. Brigid parish would be closed within two weeks. The last Mass was held at St. Brigid on September 12, 2004.

The Archdiocese subsequently removed the altar, tabernacle, statues, organ, and pews from the Church, and started to take the steps necessary to obtain a permit to demolish the building, over the objections of many of its parishioners and other community residents.

Plaintiffs then commenced the first action, Committee to Save St. Brigid, et al. v. Edward Cardinal Egan, as Cardinal of the Archdiocese of New York, and Patricia J. Lancaster, as Commissioner of the New York City Department of Buildings, Index No. 109536/05. The Complaint set forth claims for promissory estoppel (first cause of action), breach of fiduciary duty (second cause of action), alleged violation of RCL §91 (third cause of action), and breach of express or implied contract (fourth cause of action), and sought a judgment:

(a) enjoining Cardinal Egan or anyone acting on his behalf or at his direction from taking any steps to demolish the building, in whole or in part;

(b) directing Cardinal Egan to reopen St. Brigid and allow it to continue to operate as a parish church;

(c) directing Cardinal Egan to use all funds collected for the repair and renovation of the building housing St. Brigid for that purpose and that purpose alone;

(d) subjecting St. Brigid to a constructive trust to be administered in accord with the purpose for which said funds were collected, to wit, as a parish church;

(e) directing Cardinal Egan to take all steps necessary to establish a proper Board of Trustees for St. Brigid which Board of Trustees shall work to further the repair and renovation of the building housing St. Brigid and its operation as a parish church; and

(f) declaring any permit issued for the whole or partial demolition of the building housing St. Brigid null and void, and enjoining defendant Patricia J. Lancaster, as Commissioner of the New York City Department of Buildings ("DOB"), from issuing any other permits.

Plaintiffs then moved by Order to Show Cause for a preliminary injunction: (a) enjoining Cardinal Egan from demolishing, in whole or in part, the building; and (b) directing DOB to revoke any permit heretofore issued which would allow the total or partial demolition of the building.

Pursuant to Stipulation dated July 13, 2005, so-ordered by the Hon. Michael Stallman, to whom the case was originally assigned, plaintiffs' Complaint against the DOB was discontinued with prejudice.

However, defendant Egan opposed the motion for a preliminary injunction and cross-moved for an order pursuant to CPLR §3211(a)(1), (2), (5) and (7) dismissing plaintiffs' Complaint.

By Decision/Order dated January 31, 2006, this Court denied plaintiffs' motion for a preliminary injunction and granted defendant's motion to dismiss the Complaint, finding that it would be an "impermissible intrusion" into Cardinal Egan's ecclesiastical authority to mandate that he use the funds collected by Father Conway to reopen the building as a church and/or to require him to operate a parish therein, as plaintiffs sought in their first, second and fourth causes of action.

However, this Court found that the third cause of action which was based solely on the application of the Religious Corporation Law did not appear to implicate any religious doctrine or ecclesiastical issue. Nonetheless, this Court determined that plaintiffs' third cause of action and the corresponding branch of their motion for injunctive relief were not ripe for determination,

since counsel for defendant Egan acknowledged on the record during the oral argument that no demolition of the Church building could be undertaken absent a duly made decision by a properly constituted board of trustees. Cardinal Egan further indicated that the Archdiocese planned to form such a board and to schedule a meeting once the necessary permits were obtained, and prior to commencing any demolition work.

The Decision/Order of this Court was unanimously affirmed on June 29, 2006 (30 A.D.3d 356) by the Appellate Division, First Department, which determined that this Court

properly found that the disposition of the church property and funds at issue were matters within defendant's ecclesiastical authority and, accordingly, that the relief sought by plaintiffs, i.e., an order mandating that the funds in question be used to restore the subject property for use as a church, would impermissibly involve the court in the governance and administration of a hierarchical church (citations omitted). Plaintiffs' promissory estoppel claim would, in any event, be unavailing for lack of a specific promise to keep the subject church building in operation as a church if funds were collected for that purpose (citation omitted).

The Board of Trustees for St. Brigid was subsequently convened pursuant to RCL § 91 ("Government of incorporated Roman Catholic churches") which provides in relevant part:

[t]he archbishop or bishop and the vicar-general of the diocese to which any incorporated Roman Catholic church belongs, the rector of such church, and their successors in office shall, by virtue of their offices, be trustees of such church. Two laymen, members of such incorporated

church, selected by such officers or by a majority of them, shall also be trustees of such incorporated church, (emphasis supplied), and such officers and such laymen trustees shall together constitute the board of trustees thereof.

The newly constituted Board of Trustees of St. Brigid is comprised of the following individuals: 1) Cardinal Egan; 2) Bishop Robert Brucato, the Vicar General of the Archdiocese of New York; 3) Monsignor Thomas Gilleece, who was appointed by Cardinal Egan "for canonical purposes, as Administrator of St. Brigid's Parish in Manhattan", as confirmed by letter dated July 20, 2005; and 4) two lay persons, Carmine Chaparro and Ines Aybar.

A meeting of this full Board was held on July 18, 2006, without any notice to plaintiffs. Bishop Brucato represents that the Board "considered the facts, heard the opinions of experts and decided to demolish the building."

At that meeting, the Board adopted the following resolution:

RESOLVED, that the actions of the St. Brigid's Trustees and Officers and those acting on behalf of St. Brigid's, including without limitation, Archdiocesan Building Commission staff member Kevin Shaughnessy and any other staff of the Building Commission, the Archdiocese of New York or any third party consultant, in connection with the performance of structural engineering studies of St. Brigid's church and rectory buildings and the seeking of requisite governmental approval for the demolition of such buildings, including without limitation, the submission of applications for demolition permits to the New York City Department of Buildings, be, and the same hereby are, ratified and confirmed in all respects.

The Trustees further authorized Bishop Brucato, Monsignor Gilleece, and Mr. Shaughnessy "to execute and deliver any documents related to the resolution set forth above, including without limitation, any application to the New York City Department of Buildings for demolition permits."

The Archdiocese subsequently commenced demolition work on the Church based on demolition permits issued by DOB on or about August 26, 2005 and renewed on December 27, 2005 and February 21, 2006.

Plaintiffs then brought the instant action and moved by Order to Show Cause (under motion sequence number 001) for an order: (i) staying the demolition permits issued by defendant DOB under applications 104228669 and 104218678; and (ii) enjoining defendants Egan and Church of St. Brigid and their agents and employees from taking any steps to demolish, in whole or in part, the building.

Plaintiffs initially argued that an injunction was necessary to preserve the status quo pending a full review by the Board of Standards and Appeals ("BSA") of the granting of the demolition permits by DOB. Plaintiffs argued that the permits were improperly granted and should be revoked because defendant DOB failed to insure that the applicant for the permits was, in fact, the owner of the property. Specifically, plaintiffs challenged the fact that DOB issued the permits without verifying that Mr. Shaughnessy, who

signed the permit applications, was authorized by a properly constituted board of trustees for the Church of St. Brigid, as required by RCL § 91.

After hearing oral argument on the record on July 28, 2006 on plaintiffs' request for a temporary restraining order, this Court

(a) granted a temporary restraining order enjoining defendants Egan and the Church of St. Brigid and their agents and employees, pending the hearing of this motion, from taking any steps to demolish, in whole or part, the building;

(b) directed that the sum of \$103,000, which was previously raised by the parishioners in connection with Father Conway's fund to refurbish and rebuild the Church and which sum was still being held in an account by the defendant Archdiocese, should serve as the undertaking for the temporary restraining order; and

(c) directed that BSA make every effort to expedite its resolution of the appeal of the DOB's decision.

By letter dated August 2, 2006, Jeff Mulligan, Executive Director of the BSA, notified plaintiffs' counsel that the Board was not accepting the appeal, stating, in relevant part, as follows:

On July 27, 2006, you submitted to this Board a purported appeal of a Department of Buildings determination refusing to revoke demolition permits issued as to the referenced premises.

As you may know, the Board reviews technical appeals of DOB decisions related to the City's Zoning Resolution and Building Code, and certain other laws related to land use and construction. To this end, the New York City Charter requires that the composition of the Board include experts in the fields of planning, architecture, and engineering.

The fundamental question that you would like the Board to resolve, as set forth in your Statement of Facts, involves a provision of the State's Religious Corporation Law. This law is neither construction nor land use related, and its review, interpretation and application are beyond the jurisdiction of the Board. Accordingly, the Board cannot accept your appeal.

Defendants Egan and the Church then moved by Order to Show Cause (under motion sequence number 002), signed by the Hon. Martin Schoenfeld on August 7, 2006, for an order vacating the temporary restraining order and dismissing the complaint on the grounds that: (a) the rationale for the temporary restraining order was moot as a result of BSA's rejection of the appeal; and (b) plaintiffs could not succeed on the merits because the decision to demolish the building was made by the full St. Brigid Board of Trustees, including two lay members, at the July 18, 2006 meeting, in accordance with the required formalities of the RCL.

Defendant DOB similarly argued that the current case against it was moot as a result of BSA's rejection of the appeal.¹

¹ DOB further argued that BSA properly found that this matter is outside of its jurisdiction. See, Matter of Bun & Burger of Rockefeller Plaza, Inc. v. City of New York Department of Buildings, 111 A.D.2d 140 (1st Dep't 1985).

However, plaintiffs annexed to their Affirmation in Opposition a copy of a First Amended Verified Complaint dated August 18, 2006, which names the individual members of the St. Brigid Board of Trustees as additional party defendants and seeks a judgment:

(1) directing defendant DOB to revoke the demolition permit and enjoining defendants and their agents and employees from taking any further steps in furtherance of the demolition of the building (first cause of action);

(2) declaring that defendants violated RCL § 5 and enjoining defendants and their agents and employees from taking any further steps in furtherance of the demolition of the building and from transferring any contents in the building until such time as the Trustees hold a meeting with the members of the Church of St. Brigid in conformity with the RCL (second cause of action); and

(3) imposing liability against the Trustees and enjoining them and their agents and employees from taking any steps in furtherance of the demolition of the building in derogation of their fiduciary duties in failing to, inter alia, make reasonable efforts to pursue or to obtain further information on a proposal by a prospective private purchaser to purchase the structure at market price in order to renovate and preserve the building (third cause of action).

Defendants argue that the first cause of action of the First Amended Verified Complaint fails to state a valid claim for the revocation of the demolition permits.

Although there is no dispute that the applications for the permits were filed before the formation of the full board of the religious corporation (i.e., the owner of the property), defendants have satisfactorily shown that the full Board of Trustees, including the two lay members, ratified Shaughnessy's actions at the July 18, 2006 meeting, and that the submissions to the DOB were subsequently amended pursuant to section 27-154 of the Administrative Code of the City of New York, which provides, in relevant part, that "amendments to permit applications and any accompanying plans and papers may be submitted at any time before final inspection of the work or equipment is completed (emphasis supplied); and such amendments shall be deemed part of the original permit application and shall be filed therewith."

Therefore, that portion of defendants' motion seeking to dismiss the first cause of action must be granted.

Defendants next move to dismiss the second cause of action of the First Amended Verified Complaint in which plaintiffs contend that defendants violated the provisions of RCL § 5 ("General powers and duties of trustees of religious corporations").

RCL § 5 provides, in relevant part, as follows:

The trustees of every religious corporation shall have the custody and control of all the temporalities and property, real and personal, belonging to the corporation and of the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject, and with the provisions of law relating thereto, for the support and maintenance of the corporation, or, providing the members of the corporation at a meeting thereof shall so authorize (emphasis supplied), of some religious, charitable, benevolent or educational object conducted by said corporation or in connection with it, or with the denomination, if any, with which it is connected; and they shall not use such property or revenues for any other purpose or divert the same from such uses. ... The trustees of an incorporated Roman Catholic Church, ..., shall not transfer any property as herein provided without consent of the archbishop or bishop of the diocese to which such church belongs or in the case of their absence or inability to act, without the consent of the vicar general or administrator of such diocese...

Plaintiffs argue that the demolition of the place of worship entrusted to St. Brigid Church is contrary to "the support and maintenance of the corporation" of St. Brigid because the Archdiocese has previously indicated that it intends to use the property for "other (emphasis supplied) Archdiocesan purposes and ministry". Plaintiffs argue that the building may thus be demolished only upon the authorization of "the *members* (emphasis supplied) of the corporation at a meeting thereof" (RCL § 5).

The plaintiffs further argue that "the resolution of this internal dispute by a civil court does not violate the First Amendment prescription that religious bodies be left free to decide church matters for themselves, uninhibited by State interference," because this matter "can be decided on the basis of statutory interpretation and common-law precedent without reference to matters of religious belief or dogma (citations omitted)." Morris v. Scribner, 69 N.Y.2d 418, 422 (1987), rearg. den. 70 N.Y.2d 694 (1987). See also, First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America, 62 N.Y.2d 110 (1984), rearg. denied, 63 N.Y.2d 676 (1984), cert. denied, 469 U.S. 1037 (1984); Kelley v. Garuda, A.D.3d, 825 N.Y.S.2d 917 (2nd Dep't 2007); Malankara Archdiocese of Syrian Orthodox Church in North America v. Thomas, 33 A.D.3d 887 (2nd Dep't 2006); Congregation Yetev Lev D'Satmar, Inc., v. Kahana, 31 A.D.3d 541 (2nd Dep't 2006), app. disp'd, 7 N.Y.3d 898 (2006).

Defendants, on the other hand, argue that RCL § 5 is a general provision and that its reference to a meeting of "the members of the corporation" pertains to those denominations which are congregational in nature and which permit votes by the parishioners of their respective churches, (see, e.g., Sillah v. Tanvir, 18 A.D.3d 223 [1st Dep't 2005], lv. to app. den. 5 N.Y.3d 711 [2005]) and not to a Roman Catholic Church which is hierarchal in nature. See, generally, Serbian Eastern Orthodox Diocese for the United

States of America and Canada v. Milivojevich, 426 U.S. 696 (1976); First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America, supra. Defendants contend that its congregants are not "members" of the religious corporation (compare, Pappas v. Greek Orthodox Archdiocese of North and South America, 30 A.D.3d 286 [1st Dep't 2006] where it was conceded that the parishioners were "members" for corporate purposes of that hierarchal church) and that the parishioners do not have a say in the disposition of the Church's property.

Although (as plaintiffs point out) the Certificate of Incorporation also refers to the appointment of "two laymen members of said Church or Congregation", "[t]here is a well settled distinction between a church as a religious corporation and the same church as a religious society." Islamic Center of Harrison, Inc. v. Islamic Science Foundation, Inc., 216 A.D.2d 357 (2nd Dep't 1995). Thus, the references in the RCL and Certificate of Incorporation to parishioners as "members" of the religious society and/or faith do not, absent an express provision, confer membership status in the religious corporation to those individuals or grant them rights with respect to the property of the Church.

Significantly, neither St. Brigid's Certificate of Incorporation nor By-Laws confer any rights on the individual

parishioners of the Church, nor do they establish any class of "members".²

In fact, the By-Laws specifically provide that "[t]he corporate powers of this church shall be exercised in all things in conformity with the principles and general discipline of the Roman Catholic Church existing in the United States of America, and in conformity with Disciplinary Statutes of the Archdiocese of New York."

Moreover, RCL §5 specifically recognizes the archbishop's ultimate authority over the transfer of any property.

The hierarchal nature of the Catholic Church and the supremacy of the archbishop is also recognized in those sections of the RCL which specifically pertain to the Catholic Church, i.e., RCL §§ 91 and 92.

For instance, the archbishop (or bishop) and vicar general of the archdiocese are by virtue of their positions, trustees of the individual religious corporation pursuant to RCL § 91; the rector

² Pursuant to Not-For-Profit Corporation Law § 601(a), "[a] corporation shall have one or more class members, or, in the case of a Type B Corporation," which includes religious corporations (see, RCL § 2-b(2), "may have no members (emphasis supplied), in which case any such provision for classes of members or for no members shall be set forth in the certificate of incorporation or the by-laws".

of the church, who is appointed and may be removed by the archbishop, is the third trustee; and two lay parishioners selected by the ecclesiastical trustees serve as the remaining trustees. No act or proceeding of the trustees of the incorporated Roman Catholic Church is "valid without the sanction of the archbishop or bishop of the diocese to which such church belongs, or in case of their absence or inability to act, without the sanction of the vicar-general or of the administrator of such diocese." RCL § 91.

Thus, it has been observed that under RCL § 91, "the trustees of a Roman Catholic Church by the very operation of both canonical and State law are recognizably interlocked with the boards of trustees of the other Churches in the diocese" (Filetto v. St. Mary of the Assumption Church of Binghamton, 61 Misc.2d 278, 281 [Sup. Ct., Broome Co. 1969]) and the parishioners "have no voice in their selection" (The People's Bank v. St. Anthony's Roman Catholic Church, 109 N.Y. 512, 520 [1988]).

Likewise, RCL § 92 ("Division of Roman Catholic parish; disposition of property") specifically recognizes the bishop's authority to divide parishes and grants him the "right and power, of himself" to dispose of the original Roman Catholic church corporation's property, including real property, without the consent of its board of trustees.

Thus, notwithstanding the reference in the general provision of RCL § 5 to the "members of the corporation", the law clearly recognizes that the ultimate disposition of property belonging to individual parishes, including the building at issue in this case, rests with the archbishop - i.e., Cardinal Egan - and not with the local parishioners.

Moreover, the Appellate Division, First Department, specifically held in the prior action that the "disposition of the church property (emphasis supplied) and funds at issue were matters within defendant's ecclesiastical authority" (30 A.D.3d at 356).

This Court is, therefore, constrained to find that defendants are not barred by the provisions of RCL § 5 from authorizing the demolition of the building. The second cause of action must, therefore, be dismissed.

Finally, defendants move to dismiss plaintiffs' third cause of action for breach of fiduciary duty.

Section 623 of the Not-For-Profit Corporation Law ("Members' derivative action brought in the right of the corporation to procure a judgment in its favor") provides, in relevant part, as follows:

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 (emphasis supplied) or by such percentage of the holders of capital certificates or of the owners of a beneficial interest in the capital certificates of such corporation.

However, as discussed supra, the parishioners of St. Brigid are not "members" of the Corporation.

Pursuant to RCL § 2-b ("Applicability of not-for-profit corporation law),

1. The not-for-profit corporation law applies to every corporation to which this chapter applies, provided that:

(a) If any provision of the not-for-profit corporation law conflicts with any provision of this chapter, the provision of this chapter shall prevail and the conflicting provision of the not-for-profit corporation law shall not apply in such case. If any provision of this chapter relates to a matter embraced in the not-for-profit corporation law but is not in conflict therewith, both provisions shall apply.

See, The Rector, Church Wardens and Vestrymen of St. Bartholomew's Church in the City of New York v. Committee to Preserve St. Bartholomew's Church, 84 A.D.2d 309 (1st Dep't 1982), app. dism'd, 56 N.Y.2d 645 (1982).

This Court finds that Not-for-Profit Corporation Law § 623 cannot be read in tandem with those provisions of the RCL which defer to the hierarchal nature of the Catholic Church and the Archbishop's authority to dispose of Church property.


Accordingly, this Court must find that plaintiffs have no standing to bring a derivative claim. The third cause of action is consequently dismissed.

The Clerk may thus enter judgment dismissing plaintiffs' First Amended Verified Complaint with prejudice and without costs or disbursements.

Plaintiffs' motion for a preliminary injunction is, therefore, denied and the temporary restraining order granted by this Court on July 28, 2006 shall be vacated as of February 16, 2007.

This constitutes the decision and order of this Court.

Dated: February 12, 2007



Barbara R. Kapnick
J.S.C.

BARBARA R. KAPNICK
J.S.C.

