

Interfaith League of Devotees v Kumaravelan

2008 NY Slip Op 32817(U)

October 14, 2008

Supreme Court, New York County

Docket Number: 108124/2007

Judge: Jane S. Solomon

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

PRESENT: Jane S. Solomon
Justice

PART 55

INTERFAITH LEAGUE OF DEVOTEES

INDEX NO. 108124/2007

MOTION DATE 7/21/08

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

- v -

MARK KUMARAVELAN

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

1-3

4

5

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed Decision and Order.

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

FILED
OCT 15 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/14/08

JANE S. SOLOMON
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
INTERFAITH LEAGUE OF DEVOTEES, :
a Not-for-Profit Corporation, :
by its BOARD OF DIRECTORS, :
:
Plaintiff, :
:
:
-against- :
:
NARK KUMARAVELAN a/k/a NARK :
PALLIANDY a/k/a NARK KUMARAVELAN :
PALLIANDY, :
:
Defendant. :
-----X

INDEX NO. 108124/2007

DECISION and ORDER

FILED
OCT 15 2008
COUNTY CLERK'S OFFICE
NEW YORK

JANE S. SOLOMON, J.:

In this action, Interfaith League of Devotees of a Not-for-Profit Corporation, by its Board of Directors ("Interfaith") seeks an order declaring that certain leases of space in a building it owns are null and void. Interfaith moved for summary judgment and the Court denied the motion in a Decision and Order dated May 29, 2008 ("Prior Decision").

Interfaith now moves to reargue pursuant to CPLR § 2221. As set forth below, the motion to reargue is granted and the Prior Decision is recalled, vacated, and replaced with this Decision and Order. Upon reargument, the Court grants Interfaith's motion for summary judgment on its complaint because the subject leases are invalid and void *ab initio* under Religious Corporation Law ("RCL") § 12. This is because, in the Prior Decision, the Court assumed that the RCL did not apply to Interfaith since it was not

* 3]
incorporated under the RCL even though it was formed for religious purposes.

On this motion it is not disputed that Interfaith is a Type "B" corporation under § 201(b) of the Not-For-Profit Corporation Law ("N-PCL") organized for the religious and spiritual purposes of furthering the Krishna Consciousness. Defendant Nark Kumaravelan a/k/a Nark Palliandy a/k/a Nark Kumaravelan Palliandy ("Kumaravelan") was one of Interfaith's founders in 1994 and served as its president from March 1998 to January 2005. Kumaravelan was married to non-party Susan Bauer ("Bauer"), who is, and was, at all relevant times, a member of the Board.

Interfaith's principal place of business, and its primary asset, is a six story building located at 25 First Avenue in Manhattan (the "Building"). A restaurant is located on the first floor of the Building and a place of worship is on the second floor. Two residential apartments are located on each of the remaining four floors.

On or about August 20, 2003, Interfaith entered into two leases with Kumaravelan. The parties executed a ten year commercial lease to rent the entire first floor and basement of the Building for use as a restaurant. The lease was to run from December 28, 2003 until December 21, 2013. The parties also entered into a residential lease for Apartment 6E. The residential lease was to run from January 2, 2004 through January

1, 2014. Both leases were executed by Bauer on behalf of Interfaith.

In its motion for summary judgment seeking a declaration that the two leases are null and void Interfaith contends that it acted to end the leases in 2005 and principally argues that: (1) the Board did not authorize Bauer to enter into the leases; (2) Interfaith did not petition for and obtain the approval of the New York State Supreme Court before entering into the leases as required by RCL §12(1).

There is an issue of fact as to whether the Board authorized Bauer to enter into the leases. While Interfaith contends that the leases were not authorized by the Board, a member of Interfaith, and two former members of the Board who served on the Board at the time that the leases were executed submitted sworn statements stating that the leases were approved by the Board. The two former Board members, Ronald Nay and Ketan Patel, both unequivocally state that they "were present at the Board meetings when these leases were approved." Affidavit of Ronald Nay at ¶4; Affidavit of Ketan Patel at §4.

However, there is not a triable issue of fact with respect to whether Interfaith petitioned for and obtained Supreme Court approval of the leases as required by RCL §12(1). That statute provides:

A religious corporation shall not sell, mortgage or lease for a term exceeding five years any of its real property without applying for and obtaining leave of the court therefor pursuant to section five hundred eleven of the not-for-profit corporation law as that section is modified by paragraph (d-1) of subsection one of section two-b of this chapter, except that a religious corporation may execute a purchase money mortgage or a purchase money security agreement creating a security interest in personal property purchased by it without obtaining leave of the court therefor. (emphasis added).

N-PCL § 510 governs the disposition of all or substantially all of the assets of not-for-profit corporations. N-PCL § 510(3) requires that a Type B or Type C Not-For-Profit Corporation obtain leave of the Supreme Court before disposing of all or substantially all of its assets. Not-For-Profit Corporation Law ("N-PCL") § 511(a) provides:

A corporation required by law to obtain leave of court to sell, lease, exchange or otherwise dispose of all or substantially all its assets, shall present a verified petition to the supreme court of the judicial district, or the county court of the county, wherein the corporation has its office or principal place of carrying out the purposes for which it was formed. (emphasis added).

The remainder of N-PCL § 511 sets forth certain information which must be included in the petition, the standard that a Court should use in assessing the merits of an application, and the general procedural framework for bringing a petition.

RCL §12(1) clearly requires a religious corporation to obtain leave of court to sell, mortgage or lease for a term exceeding five years any of its real property. *Church of God of Prospect Plaza v. Fourth Church of Christ, Scientist*, 54 N.Y.2d

742, 743-44 (1981); *Soho Center for Arts and Educ. v. Church of St. Anthony of Padua*, 146 A.D.2d 407, 411 (1st Dept. 1989).

"The purpose of this requirement is 'to protect the members of the religious corporation . . . from loss through unwise bargains and from the perversion of the use of the property.'" *Diocese of Buffalo, N.Y. v. McCarthy*, 91 A.D.2d 213, 217 (4th Dept. 1983) (citation omitted).

RCL §12(1) imposes a more stringent approval requirement on religious corporations than is applicable to non-religious Type B or Type C Not-For-Profit Corporations. Leave of court must be obtained whenever any of a religious corporation's real property is sold, mortgaged, or leased for more than five years. The reference to N-PCL §511 in RCL §12(1) does not render RCL §12(1) applicable only when a religious corporation is selling, leasing, or mortgaging all or substantially all of its assets. See *Soho Center for Arts and Educ.*, 146 A.D.2d at 409-11; *Greek Orthodox Archdiocese of North and South America v. Abrams*, 162 Misc.2d 850, 855 (Supreme Court N.Y. County, 1994).

"Mindful of [the purpose behind RCL §12] and in furtherance thereof, the courts have construed [RCL §12] strictly and held that compliance with it is 'absolutely necessary' and 'indispensable' to the validity of the transaction." *Diocese of Buffalo, N.Y.*, 91 A.D.2d at 217 (citation omitted). As such, a

transaction entered into by a religious corporation in non-compliance with RCL §12(1) is invalid and void. *Berlin v. New Hope Holiness Church of God, Inc.*, 93 A.D.2d 798, 804 (2nd Dept. 1983).; *Bernstein v. Friedlander*, 58 Misc.2d 492, 495 (Supreme Court N.Y. County, 1968); *Application of Margolin*, 16 Misc.2d 961, 963 (Supreme Court Kings County, 1958).

Here, it is admitted that the RCL §12(1) requirement was not complied with in that leave of Court was never sought or obtained for the residential and commercial leases between Interfaith and Kumaravelan. Thus, the two leases are invalid and void *ab initio*. See *Soho Center for Arts and Educ.*, 146 A.D.2d at 409-11 (the court declared a lease of a portion of the ground floor and the roof of a building owned by a church void *ab initio* for non-compliance with RCL §12). In the opposition to Interfaith's summary judgment motion, Kumaravelan does not dispute that Interfaith is to be treated as an entity to which RCL §12 is applicable.

RCL §12(9) permits a Court to entertain an application to subsequently authorize a transaction that was originally entered into without leave of court as required by RCL §12(1). However, an application for such relief is not properly before the Court. The request made in the body of defendant's opposition papers for *nunc pro tunc* validation of the leases is improperly brought and, in any event, does not adequately set forth sufficient grounds

for validating the subject transaction.

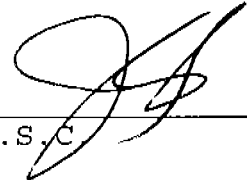
Based on the foregoing, it is:

ORDERED that Interfaith's motion to reargue is granted;

ORDERED that, upon reargument, the Court's Decision and Order dated May 29, 2008 is recalled, vacated, and replaced with this Decision and Order; and

ORDERED that Interfaith's motion for summary judgment is granted to the extent that the residential and commercial leases dated August 20, 2003 are invalid and void *ab initio*.

Dated: October 14, 2008



 J.S.C.
JANE S. SOLOMON

FILED
 OCT 15 2008
 COUNTY CLERK'S OFFICE
 NEW YORK