Classis of Queens v Members of Superceded Consistory of Taiwanese American Reformed Church in Queens
2008 NY Slip Op 32957(U)
October 15, 2008
Supreme Court, Queens County
Docket Number: 24833/05
Judge: Lawrence Vincent Cullen

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: Honorable **LAWRENCE V. CULLEN** IAS PART 6
Justice

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THE CLASSIS OF QUEENS, REFORMED CHURCH IN AMERICA,

Plaintiff,

-against-

MEMBERS OF THE SUPERCEDED CONSISTORY OF THE TAIWANESE AMERICAN REFORMED CHURCH IN QUEENS, et al

Defendants.

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Index No.: 24833/05

Motion Date: 6/19/07

Motion Cal. No.: 4

Motion Seq. No.: 4

Hearing Date: 1/22/08

The following papers numbered 1 to 24 on this motion:

	PAPERS NUMBERED
Plaintiff's Notice of Motion for Partial Summary Judgment and to Dismiss Counterclaims - Affidavits - Affirmation - Service - Exhibit (s) - Plaintiff's Memorandum of Law	1 - 7
Defendant's Notice of Cross Motion - Affirmation - Affidavits - Exhibit (s)- Defendant's Memorandum of Law.....	8 - 14
Plaintiff's Affirmation in Opposition to Cross Motion - Affidavit (s) - Exhibit (s).....	15 - 18
Defendant's Reply Affirmation - Affidavit (s) - Exhibit(s).....	19 - 21
Defendant's Anser to Plaintiff's Amended Complaint With Affirmative Defense and Counterclaims - Exhibit (s).....	22 - 23
The Book of the Church Order.....	24

Plaintiff, THE CLASSIS OF QUEENS, REFORMED CHURCH IN AMERICA (hereinafter referred to as "CLASSIS") by notice of motion, seeks an order pursuant to CPLR § 3212 granting plaintiff summary judgment on the First, Second, and Third Causes of Action of the Verified Amended Complaint, and an order dismissing the defendant's counterclaims.

Defendants, MEMBERS OF THE SUPERCEDED CONSISTORY OF THE TAIWANESE AMERICAN REFORMED CHURCH IN QUEENS, ET AL (hereinafter collectively referred to as "TARC") by notice of cross motion, seeks an order pursuant to CPLR § 3211(a)(1), 3211(a)(3), and 3211 (a) (7) granting summary judgment dismissing plaintiffs' complaint; an order denying plaintiff's motion for partial summary judgment; and a judgment in the amount of $5,000,000 against plaintiffs and its agent jointly and severally with interest, costs, disbursements and reasonable attorney fees.

This matter having been set down for a hearing on January 22, 2008, and the parties having appeared before this Court and having presented their arguments herein, the aforesaid motion and cross motion are determined as follows:

FACTUAL BACKGROUND

In order to determine the issues raised by the parties herein, a review of the backgrounds facts and time line is critical.

The Reformed Church in America ("RCA") is a hierarchical church with a defined structure of government, which is set forth in its Book of Church Order ("BCO").

The plaintiff, CLASSIS, was created under New York Religious Corporation Law §112. It serves as the governing tribunal for member churches, which includes the defendant TARC. CLASSIS has the authority to remove a local consistory if it is not fulfilling its duties under the BCO. It further has authority to take over control and supervision of church property. [See, BCO 1, II, 2, Sec. 4 at pg. 29].

Defendant, TARC, was incorporated as a Religious Corporation of the CLASSIS on August 22, 1986. It is important to note that said certificate of incorporation was under Article 10. As a result of TARC becoming an incorporated member of CLASSIS, TARC deemed to have vested with the RCA all of its property, including the premises which is the subject of this matter. [See, BCO 1, I, Sec. 13 at pg. 16]

The Elders and Deacons of TARC (hereinafter referred to as the "consistory") serve as the Board of Trustees of TARC, and therefore, have contracted to make themselves amenable and answerable to the CLASSIS and to be trusted stewards of congregation and property.

On June 22, 1991, TARC amended their Certificate of Incorporation from an Article 10 to an Article 6 corporation, which is the RCA. By filing said Amended Certificate of Incorporation, TARC formally acknowledged their affiliation and membership with CLASSIS.

Thereafter on October 10, 1999, TARC filed a Restated Certificate of Incorporation which expressly recites that: (i) it shall be governed under Article 6 exclusively for purposes of the Internal Revenue Service; (ii) it shall be a local church and member church of the RCA as defined n the BCO; (iii) it shall be subject to and governed by the constitution of the RCA; and (iv) this certification shall not be amended or modified in any manner without prior written consent of the CLASSIS.

On December 3, 2000, TARC wrote to the CLASSIS requesting consent to sell property located at 170th Street, Flushing, New York. Thereafter on December 5, 2000, CLASSIS approved the sale of 170th Street property for a sales price of $385,000, and that said proceeds to be used entirely to finance the new church building located at 213-08 48th Avenue, Bayside, New York (hereinafter referred to as the "subject property").

The subject property was purchased on October 18, 1999 for a purchase price of $805,000. TARC received two loans in November 1999 of $300,000 each from RCA. TARC only drew down $150,000 from said loans in exchange for a mortgage on the property issued to RCA. As such, there were numerous insurance policies naming TARC and RCA as insured. Additionally, it is duly noted that at the time of the purchase, to wit: October 1999, TARC was a corporation under Article 6, expressly acknowledged that it was a "local church" of RCA, and was governed by the Constitution of RCA.

Further, it is noted that TARC has received over one million dollars in support and tax exemptions from RCA on the express understanding that TARC was a "local church".

Plaintiff alleges that during the year of 2005, TARC took a series of actions attempting to withdraw from the CLASSIS. Said alleged actions include wrongful seizure of property, preventing CLASSIS officials from entering the Parish, precluding the CLASSIS's appointed minister from conducting religious service at the Parish, and precluding CLASSIS's representatives from meeting at the church property with the TARC congregation.

Due to the aforesaid actions by TARC, plaintiff commenced this action before the Supreme Court, County of New York, and was granted a temporary restraining order by the Hon. Sherry Klein Heitler which expressly restrained and enjoined TARC from, *inter alia*, wrongly dissipating and/or interfering with the CLASSIS's use of property and assets as set forth by the Constitution of the RCA.

On June 28, 2005 CLASSIS had a stated session and they voted to supercede TARC. Thereafter, on July 19, 2005 CLASSIS had a special meeting for which the purpose was to hear from TARC why they should not be superceded. At said meeting CLASSIS voted to supercede and on July 21, 2005 CLASSIS wrote to TARC stating the results of the July 19, 2005 meeting.

On July 28, 2005, TARC wrote to CLASSIS stating that as of the July 19, 2005 meeting they had already verbally declared their separation from RCA, and that at the June 28, 2005 meeting they stated their opposition and decided to withdraw from RCA.

Thereafter, on August 10, 2005 TARC filed a second Restated and Amended Certificate of Incorporation changing the incorporation from Article 6 to Article 10 of the Religious Corporation Law. TARC did not obtain the prior written consent of CLASSIS as provided for in the October 10, 1999 amended certificate of incorporation. Further, TARC changed its name in said amended certificate, as well as seized church property, changed the locks of the doors to the church, excluded the CLASSIS from providing worship, as well as many other violation of the TRO issued by Judge Heitler.

Subsequently, Judge Heitler transferred this matter to Queens County, and hence is before this Court for determination.

PLAINTIFF'S REQUEST FOR SUMMARY JUDGMENT ON FIRST CAUSE OF ACTION SEEKING A PRELIMINARY AND PERMANENT INJUNCTION

In Plaintiff's first cause of action, plaintiff seeks a preliminary and permanent injunction enjoining the defendants, and all those acting in concert with them from:

(I) interfering with the CLASSIS's compensation of a Minister of the Word and Sacrament at TARC;

(II) interfering with CLASSIS's reconstitution of the Consistory and administration of the TARC properties;

(III) wrongly dissipating and/or interfering with the CLASSIS's use of TARC property and assets, other than in a manner consistent with the RCA in accordance with the BCO;

(IV) wrongfully interfering with the CLASSIS's conduct of services of worship at TARC property; AND

(V) commencing judicial or other civil actions by or in the name of the superseded Consistory or members of the congregation which do not comply and conform with the Governance of the RCA pursuant to and the Supervision of the CLASSIS to which TARC is amendable and subordinate.

Plaintiff argues that without an injunction, they will be irreparably harmed and that they have no adequate remedy at law.

A party is entitled to a preliminary injunction only where it has demonstrated (1) probability of success on the merits; (2) irreparable harm in absence of injunction; and (3)

balance of equities in its favor. (Related Properties, Inc. v. Town Bd. of Town/Village of Harrison, 22 A.D.3d 587, 802 N.Y.S.2d 221 [2nd Dept. 2005]; First Franklin Square Associates, LLC v. Franklin Square Property Account, 15 A.D.3d 529, 790 N.Y.S.2d 527 [2nd Dept. 2005]).

Plaintiff, CLASSIS, contends that TARC has been, and continues to be in violation of the temporary restraining order issued by Judge Heitler in August 2005. That these violations are present and imminent.

That the actions of the defendants TARC show their intention to keep the church property which they have wrongfully converted, and other than an injunction, no other remedy is available to CLASSIS which would ensure that it will be able to exercise its rightful authority over the supervision and administration of the church property at issue.

The CLASSIS further contends that it will be irreparably harmed if an injunction is not issued in that TARC has seized and is in sole control over the subject property.

Lastly, the CLASSIS avers that they have established a superior right to the property at issue and therefore, equity is balanced in their favor.

TARC's opposition consists merely of a denial that there was a temporary restraining order ever issued, and that the CLASSIS never posted any undertaking as security when it applied for said TRO.

It is clear that the plaintiff has met the burden with respect to a preliminary injunction, and that the temporary restraining order issued by Judge Heitler should be continued until a final disposition of this matter.

However, plaintiff's motion for summary judgment granting a permanent injunction is not appropriate. The standard of summary judgment requires the proponent to make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact from the case, and such showing must be made by producing evidentiary proof in admissible form. (Santanastasio v. Doe, 301 AD2d 511, 753 N.Y.S.2d 122 [2nd Dept. 2003])

In the case at bar, the rightful ownership of the subject premises is clearly a dispute issue of fact. If it is determined that TARC is the owner of said premises, then a permanent injunction in favor of the plaintiff would be inappropriate.

Accordingly, inasmuch as there are material issues of fact regarding the ownership of the subject premises, plaintiff's has not established a prima facie entitlement to summary judgment on its first cause of action.

PLAINTIFF'S REQUEST FOR SUMMARY JUDGMENT ON SECOND CAUSE OF ACTION SEEKING A CONSTRUCTIVE TRUST

It is well settled that the requirements for the imposition of the equitable remedy of constructive trust are: (1) confidential or fiduciary relationship; (2) a promise; (3) a transfer in reliance thereon; and (4) unjust enrichment. (Sharp v. Kosmalski, 40 N.Y.S.2d 119, 351 N.E.2d 721 [Ct. App. 1976]).

Plaintiff, CLASSIS, argues that it is entitled to summary judgment granting the imposition of a constructive trust herein. Plaintiff states that TARC, as a local church has accepted the subject premises in trust pursuant to the rules and regulations codified in the BCO. CLASSIS contends that TARC expressly acquiesced to such subordination, and has received substantial monetary support from the RCA. The CLASSIS states that TARC holds the subject premises under circumstances that in equity and good conscience TARC ought not to retain. Therefore, TARC has been unjustly enriched.

In opposition, TARC argues that the imposition of a constructive trust would be improper for the following reasons:

First, there is no confidential or fiduciary relationship between TARC and CLASSIS. Rather, the relationship between TARC and CLASSIS and RCA is a business relationship in that RCA loaned money and TARC was the borrower, akin to a mortgagee and mortgagor relationship.

Next, there was no promise made by TARC, as well as no transfer in reliance thereon.

Lastly, TARC has committed no wrongdoing and makes timely payments on the loan to RCA. Therefore, any claim of unjust enrichment must fail.

There are clear issues of fact concerning whether or not there was a promise and a transfer in reliance thereon. Accordingly, plaintiff has not established a prima facie case warranting summary judgment on its second cause of action herein.

PLAINTIFF'S REQUEST FOR SUMMARY JUDGMENT ON THIRD CAUSE OF ACTION SEEKING A DECLARATORY JUDGMENT

Plaintiff's third cause of action seeks a declaratory judgment pursuant to CPLR §3001 holding:

(I) Holding that Defendants have no rights to "withdraw" from the RCA other than pursuant to the governance of RCA and prior to exhausting all available avenues of appeal available to them within the denomination under the BCO.

(II) Holding that Defendants have no rights to interfere with Classis's administration of TARC's property other than pursuant to the Governance of RCA and prior to exhausting all available avenues of appeal available to them within the denomination under the BCO.

Plaintiffs argue that while the last filed amended certificate of incorporation lists TARC as an Article 10 corporation, it is clear that said amended certificate was filed after the CLASSIS voted to supercede them. Further, the Amended Certificate of Incorporation filed on October 10, 1999 expressly stated that TARC is an Article 6 corporation and is a "local church" as defined by the RCA, accordingly it is clear that at the time of the purchase of the subject premises they were a member of RCA and it was only after it was voted that the CLASSIS would supercede TARC that an amended certificate was filed.

Defendants steadfastly contend that they are a corporation formed under Article 10 of the Religious Corporation Law. Article 10 governs churches of non-denomination and is inapplicable to RCA. Accordingly, they are not a "local church" of the RCA and therefore not subject to the Governance of the RCA.

Once again, the court is presented with disputed issues of material facts which preclude an award of summary judgment on plaintiff's third cause of action.

PLAINTIFF'S REQUEST FOR AN ORDER DISMISSING DEFENDANTS' COUNTERCLAIMS

Plaintiffs argue that the counterclaims contained in defendants' answer should be dismissed in that they are woefully deficient.

It is clear that a counterclaim must contain facts which set forth a separate and distinct cause of action. It cannot be contingent on the outcome of plaintiff's claims, that is it must be able to stand alone. (See, Fehlhaber Corp. v. State, 69 A.D.2d 362; Efdey Elec. Contractors, Inc. v. Melita, 167 A.D.2d 501).

After reviewing the counterclaim interposed by defendant herein, this Court agrees with plaintiff in that said counterclaim is devoid of any facts that set forth a cause of action against the plaintiffs. Rather, the counterclaim sets forth that the actions by the defendants were lawful and that they have been harmed. Said "counterclaim" fails to allege a viable cause of action, and therefore, the same is hereby dismissed.

DEFENDANT'S CROSS MOTION SEEKING SUMMARY JUDGMENT DISMISSING PLAINTIFFS' COMPLAINT

Defendants seek summary judgment dismissing the plaintiffs' complaint on the grounds that plaintiffs have no legal basis or fact to support their claim to TARC's property. TARC alleges that the documents clearly prove that TARC is a different denomination that CLASSIS, that TARC has ownership of the property, it was TARC who paid the purchase price, and the deed is in the name of TARC.

Defendants have clearly failed to establish a prima facie right to summary judgment herein. The ownership of the subject premises is one of the main disputes between the parties herein. Further, plaintiff claims they loaned money to TARC to purchase the subject premises, as well as dispute defendants' claimed denomination. Accordingly, defendants' cross motion for summary judgment is denied.

Based on the foregoing, it is hereby

ORDERED that the temporary restraining order issued by Judge Heitler on August 3, 2005 is hereby continued and the same shall stay in effect until a final disposition of this matter or until a further order of the court; and it is further

ORDERED that plaintiffs' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion to dismiss defendants' counterclaim is granted; and it is further

ORDERED that defendants' cross motion for summary judgment is denied.

Dated: October 15, 2008

LAWRENCE V. CULLEN, J.S.C.