

**Blaudziunas v Egan**

2008 NY Slip Op 33144(U)

November 18, 2008

Supreme Court, New York County

Docket Number: 102183/2008

Judge: Louis B. York

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

PRESENT: York  
Justice

PART 2

Index Number : 102183/2008

BLAUDZIUNAS, MINDAUGAS

vs

EGAN, EDWARD CARDINAL

Sequence Number : 002

DISMISS

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

is 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 IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM DECISION.**

**FILED**  
NOV 24 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 11/18/08

Lby  
**LOUIS B. YORK**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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 2**

-----X  
**MINDAUGAS BLAUDZIUNAS, DALE  
BULGARIS, MILDA ALKAITIS, JURGIS  
ALEJUNAS, and STASE ALEJUNAS,**

**Index No.: 102183/2008**

**Plaintiffs,**

**- against -**

**EDWARD CARDINAL EGAN, as Cardinal  
of the Archdiocese of New York and as Trustee  
of Our Lady of Vilna Church, OUR LADY OF  
VILNA CHURCH, MONSIGNOR THOMAS E.  
GILLEECE, BISHOP ROBERT A. BRUCATO,  
CLAIRELIBONATI and THOMAS LIBONATI,  
as Trustees of Our Lady of Vilna Church,**

**Defendants.**

-----X  
**Louis B. York, J.:**

Motion sequence numbers 1 and 2 are consolidated for disposition and resolved as follows:

In this action, plaintiffs, who are parishioners of Our Lady of Vilna Church (“the Church”), seek a declaration that defendants, who include the Cardinal of the Archdiocese of New York and the Trustees of the Church, violated Religious Corporations Law § 5 and an injunction preventing them from demolishing the Church and/or removing the contents of the Church from the building until the Trustees hold a meeting with the Church members about the demolition. In addition, plaintiffs seek a judgment of liability against the Trustee defendants.

This Court held the Order to Show Cause and motion to dismiss in abeyance because it appeared that the Court of Appeals was going to hear the appeal in Committee to Save St. Brigid

Inc. v. Egan, Index No. 110443/2006, and clarify the applicable law. However, in May of this year, an anonymous donor made a \$20 million gift to that church; once the gift has been transferred to the church in full later this year, St. Brigid apparently will be renovated rather than demolished. In August, the Church withdrew its demolition permit. Although the appeal has not been withdrawn, in September the Court of Appeals adjourned the matter, preserving the status quo pending the final resolution of this dispute between the parties. As it now appears highly unlikely that St. Brigid will be argued to the Court of Appeals, it is appropriate to consider the dispute at hand without further delay.

Defendants subsequently moved to dismiss the action. For the reasons below, the Court denies the preliminary injunction, grants the motion to dismiss and dismisses the action.

#### **I. Committee to Save St. Brigid Inc. v. Egan.**

As the discussion above suggests, one case of particular significance here is Committee to Save St. Brigid Inc. v. Egan. St. Brigid, one of the oldest Roman Catholic Churches in New York City, had fallen into a state of disrepair. Rather than repair it, the Archdiocese decided to close the church, remove its valuable contents, and demolish it. Like the case currently before this Court, St. Brigid proceeded in a bifurcated fashion. The first action, Committee to Save St. Brigid Inc. v. Egan, Index No. 109536/2005 ("St. Brigid I"), was commenced when the Archdiocese removed the altar, tabernacle, statues, organ and pews and commenced efforts to obtain a demolition permit. The plaintiffs, among others, had contributed to a church restoration fund which totaled \$103,000. In the first St. Brigid case, the plaintiffs not only sought to enjoin the closing of the church, but sought a mandate that the \$103,000 be used for its renovation.

As is relevant here, in the plaintiffs' motion for preliminary injunction they argued that,

under RCL § 91,<sup>1</sup> St. Brigid's board of trustees must approve any decision to close or demolish St. Brigid. Justice Barbara R. Kapnick, who presided over both St. Brigid actions, noted that courts must balance two principles when considering church property disputes: the State's legitimate interest in providing a forum for the peaceful resolution of church property disputes; and the equally strong mandate that the courts not resolve these disputes based on religious doctrine and practice, but defer to hierarchical church organizations on matters of religious doctrine or polity. St. Brigid I, at 6-7. For these reasons courts can only consider cases involving neutral legal principles rather than religious doctrines or ecclesiastical issues. Id., at 7.

To the extent that the plaintiffs in St. Brigid I sought to direct the defendant, Cardinal Egan, to use church funds to restore St. Brigid, Justice Kapnick concluded that consideration of the issue would require an impermissible intrusion into Cardinal Egan's ecclesiastical authority to use church funds as he deemed appropriate. However, another cause of action, which related to the appointment of the board of trustees, could be decided by neutral principles of law. At the time St. Brigid I was before Justice Kapnick, the defendant Cardinal Egan conceded that there was not a properly appointed board of trustees in place. He also conceded that the defendants could demolish the church only after the formation of the board and a duly made decision by the board. Therefore, Justice Kapnick concluded the issue was not ripe for judicial review. Id., at pp. 9-10. The First Department affirmed the trial court's decision. Committee to Save St. Brigid v. Egan, 30 A.D.3d 356, 819 N.Y.S.2d 7 (1<sup>st</sup> Dept. 2006). In its brief decision, the First Department used broad language to support its finding that the trial court had ruled correctly –

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<sup>1</sup> RCL § 91 provides that the archbishop, the vicar-general of the diocese, the church rector, and two lay church members, should comprise the trustees of an incorporated church.

stating, in particular, that “the disposition of church property and funds at issue were matters within the defendant’s ecclesiastical authority.” Id. at 356, 819 N.Y.S.2d at 8.

Subsequent to the initial lawsuit, a board of trustees was appointed. The board of trustees convened on July 18, 2006 and voted to demolish St. Brigid. The Archdiocese also obtained the necessary demolition permits; by the Cardinal’s own concession he filed his application for these permits before the board of trustees had been formed. In the second case, Committee to Save St. Brigid Inc. v. Egan, Index No. 110443/2006 (“St. Brigid II”), among other things, the plaintiffs sought to enjoin Cardinal Egan from demolishing the building, to direct the Cardinal to reopen the church and repair/renovate it, and to void any demolition permits that might exist.

The first cause of action challenged the demolition permits because the Archdiocese had applied for them before the board approved the demolition. However, Justice Kapnick, who also considered St. Brigid II, found that under the Administrative Code this type of subsequent ratification is permissible. St. Brigid II, at p. 12.

The second cause of action alleged that defendants had violated RCL § 5 in approving the demolition. That provision states, in pertinent part, that the trustees of a church incorporated under the RCL have a duty to administer the church and control the church property “for the support and maintenance of the corporation, or, [if] the members of the corporation . . . so authorize, [for the support and maintenance] of some religious, charitable, benevolent or educational object conducted by [or in connection with the religious] corporation.” RCL § 5. Further, the law states that the trustees cannot use church property “for any other purpose or divert the same from such uses.” RCL § 5. According to the plaintiffs, the demolition of the church was contrary to its support and maintenance and also constituted an intent to use the

property for “other” purposes within the meaning of RCL § 5. Thus, approval by the church members, rather than simply by its trustees, was required.

Justice Kapnick rejected this interpretation of the statute. She noted the distinction between the church in its capacity as a religious corporation and the church in its capacity as a religious society. In the context of RCL § 5, which refers to the corporate church, the reference to the church members does not include the congregation, who instead are members of the religious society. St. Brigid II, at 13-17.

Moreover, and of significance here, the court further noted that RCL § 5 expressly confers ultimate authority over the transfer of real property to the archbishop. In addition, Sections 91 and 92 of the RCL also emphasize the hierarchical nature of the Roman Catholic Church, and require the sanction of the archbishop for any act or proceeding of the trustees. St. Brigid II, at 17. The court went into additional detail, discussing sections of RCL §§ 91 and 92 that, though not directly applicable to the St. Brigid conveyance, emphasize the power of the archbishop in matters relating to church property. St. Brigid II, at 17-18. Further noting the broad language in the First Department’s decision in St. Brigid I, the court concluded 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,” and that, therefore, “defendants are not barred by the provisions of RCL § 5 from authorizing the demolition of the building.” Id., at p. 18.

The trial court’s dismissal of St. Brigid II was affirmed by the First Department. 45 A.D.3d 375, 846 N.Y.S.2d 30 (1<sup>st</sup> Dept. 2007), lv granted, 10 N.Y.3d 756, 853 N.Y.S.2d 538 (2008). The issue was not whether the parishioners had rights in their dispute over St. Brigid, or

whether their rights were violated, the First Department said, “but whether, or to what extent the courts should intervene in the internal governance of a hierarchical church.” Id. at 375, 846 N.Y.S.2d at 31. The decision also reiterated that in affirming Justice Kapnick’s decision in St. Brigid I, “we specifically adhered to the long-standing and sensible prohibition against court involvement in the governance and administration of a hierarchical church . . . .” Id. at 376, 846 N.Y.S.2d at 31. Moreover, and of particular significance here, the First Department rejected the plaintiffs’ attempt to distinguish St. Brigid I, which involved the defendant’s attempt to remove items from the church and to close it, from St. Brigid II, which involved the decision to demolish the church, stating that “it is clear that the present claims derive from the same circumstances as those dismissed in the first action, i.e., defendants’ decision to demolish the church, and therefore must also be dismissed.” Id. Finally, the Court held that RCL §§ 5, 91 and 92 “clearly vest approval authority for all actions taken by the trustees of an incorporated church in the archbishop . . . .” Id. (citations and internal quotation marks omitted). In reaching this determination, the court specifically rejected the position of the dissent, who felt that the consent of the parishioners was required under RCL § 5.

## II. Episcopal Diocese of Rochester v. Harnish

A recent case addressed the issue of whether the Episcopal Diocese in Rochester could declare All Saints Protestant Episcopal Church extinct and exert possession of its contents and real property. Episcopal Diocese of Rochester v. Harnish, 17 Misc. 3d 1105(A), 851 N.Y.S.2d 57 (table) (Sup. Ct. Monroe County 2006)(avail at 2006 WL 4809425)(“Harnish”), aff’d, 43 A.D.3d 1406, 841 N.Y.S.2d 923 (4<sup>th</sup> Dept. 2007), aff’d, – N.Y.3d –, – N.Y.S.2d – (Ct. App. Oct. 23, 2008)(avail at 2008 WL 4657796). In some ways, the case is distinguishable from the one at

hand, due to the differences between the Catholic and the Episcopal Churches. Because the trial court decision ultimately was affirmed by the Court of Appeals, however, this Court shall examine the precedent for the general guidelines it provides.

The clash between the diocese and the church which precipitated Harnish centered on theological differences between the general and local church. At issue as whether the courts were able to determine the resulting property dispute. The Supreme Court noted that courts have the power to determine property disputes between local churches and the general church as long as they utilize an accepted mode of analysis. Id., 2006 WL 4809425, at \*8. As indicated earlier, see supra at p. 3, New York uses the “neutral principles of law” model, under which courts focus on the language of the deeds, the terms of the local church’s charter, the applicable statutes, and constitutional provisions relating to the ownership and control of church property. Harnish, 2006 WL 4809425, at \*8. In evaluating the issue, a court must scrutinize the documents in secular terms only, without reference to religious precepts, internal religious disputes, or matters that are of purely ecclesiastical or religious concerns. Id., at \*8-9. The Harnish Court then analyzed (1) the local church charter, under which All Saints was considered an integral part of the greater church, (2) statutory law, which included the requirement that the bishop and the standing committee of the diocese approve any sales, mortgages or leases of local church property, and (3) the National Church constitution, or “Dennis Canons,” not applicable in the case before this Court, which specifically states that local church property is held in trust for the church and the diocese of which it is a part. Id., at \*9-11. The Fourth Department affirmed the trial court’s decision, adopting the trial court’s reasoning. Episcopal Diocese of Rochester v. Harnish, 43 A.D.3d 1406, 841 N.Y.S.2d 923 (4<sup>th</sup> Dept. 2007), aff’d, – N.Y.3d –, – N.Y.S.2d – (Oct. 23,

2008)(avail at 2008 WL 4657796).

Recently, the Court of Appeals affirmed the Supreme Court and Fourth Department decisions. Episcopal Diocese of Rochester v. Harnish, – N.Y.3d –, – N.Y.S.2d – (Ct. App. Oct. 23, 2008)(avail at 2008 WL 4657796). The Court of Appeals reiterated this State’s adherence to the neutral principles of law doctrine. Id., 2008 WL 4657795, at \*4. It also emphasized that there should be a multi-faceted analysis, based on the deeds, the church charter, the statutory laws, and the general church constitution. Id. As suggested above, the particulars of the analysis in Harnish are not applicable here. However, the general analytical framework does apply.

### III. Church of Our Lady of Vilna v. The Archbishopric of New York

In addition to St. Brigid I, St. Brigid II and Harnish, this Court cannot overlook another compelling precedent. An earlier litigation in the Supreme Court of this County also involved the attempt of members of the Church of Our Lady of Vilna to save the Church from destruction. In Church of Our Lady of Vilna v. The Archbishopric of New York, Index 105792/200, the Church and two alleged members of the Board of Trustees of the Church sought a declaratory judgment that the defendants – the Archbishopric, the Archdiocese, Cardinal Egan, and those who acted on behalf of the named defendants – had no right to close the Church, seize and dispose of Church property, or sell the real property. In the case the plaintiffs also sought a permanent injunction prohibiting the above actions.

Justice Shirley Werner Kornreich considered that matter, and issued a decision in May, 2007, in which she denied the preliminary injunction and lifted all restraints from the defendants, enabling them to proceed with their plans for the Church. The Church of Our Lady of Vilna v. The Archbishopric of New York, Index 105792/2007, 15 Misc. 3d 1143(A), 841 N.Y.S.2d 818

(Sup. Court N.Y. County May 29, 2007)(Our Lady of Vilna) (avail at 2007 WL 1575509).

Because the issues are so closely aligned with those currently at hand, a detailed description is appropriate.

The Church adopted its current by-laws in 1980. Under these by-laws, the Archbishop, Vicar General and Rector serve on the Board of Trustees along with two of the Church's lay members, whom the Archbishop must approve. Also under the by-laws, the rules of the Catholic Church and the Archdiocese govern the property and affairs of the Church. In addition, although the trustees retain custody and control of the Church's possessions, the Archbishop must consent to the sale and conveyance or the repair of the Church. Id., 2007 WL 1575509, at \*1.

In a press release dated January 19, 2007, the Archdiocese publicly announced the intention to close the Church. According to the Archdiocese, the average attendance at weekly mass was less than 100, and hardly any weddings or baptisms had been held over the past several years. On February 26, 2007, the Church was padlocked. Over five hundred parishioners signed a petition asking Cardinal Egan to reopen the Church and the plaintiffs sought an audience with the Cardinal to discuss their request. However, the Cardinal denied the plaintiffs an audience. Throughout March and April, various items – artwork, a pulpit, an electronic keyboard – were removed from the Church for use at other area churches. At that point, the plaintiffs commenced a lawsuit in which they sought to restrain the defendants, including the Archdiocese and Cardinal Egan, from removing or destroying this property. They also raised arguments relating to the replacement of the trustees and of Father Sawicki, the former rector of the Church.. Id. at \* 2.

In response, the defendants argued that the roof of the Church building was in danger of collapse, and removal of the items was necessary in order to protect them. In addition, they

contended that all of the items in question were ecclesiastical goods belonging to the Archdiocese, which therefore had an absolute right to effectuate the transfer. Finally, they contested the standing of the plaintiffs whom they alleged were former trustees of the Church and the jurisdiction of the Court to resolve the dispute.

After an initial restraining order which prevented the defendants from destroying any of the contested property, Justice Kornreich issued the decision to which this Court has referred. In it, she attempted to delineate the boundary between church and state as it applied to the dispute before the court. The decision first noted the distinction between hierarchical and congregational churches, explaining that congregational churches are strictly independent of higher ecclesiastical associations of the same faith, and therefore one church does not owe “fealty or obligation” to a higher church authority. Hierarchical churches, on the other hand, are subordinate to a general church organization “in which there are superior ecclesiastical tribunals with a general and ultimate power of control . . . .” *Id.*, at 3 (quoting Maryland & Virginia Eldership of Churches of God v. Church of God, Inc., 396 U.S. 367, 370 n.1 (1970)).

As a result of this distinction there is more risk of intrusion into the affairs of a hierarchical church, and accordingly hierarchical churches are treated differently by the Courts. Disputes arising between a hierarchical religious organization and one or more of its members “are not subject to resolution in the civil courts.” Our Lady of Vilna, 2007 WL 1575509, at \*3 (quoting Williams v. Arpie, 44 N.Y.2d 689, 691, 405 N.Y.S.2d 437, 437 (1978)). In another context, the Our Lady of Vilna Court noted, the Court of Appeals also has stated that the Roman Catholic Archbishop’s role as trustee of church property ‘exclude[s] the laity from that power of interference which they would have were the title vested in a corporation.’” Our Lady of Vilna,

2007 WL 1575509, at \*3 (quoting Baxter v. McDonnell, 155 N.Y. 83, 93-94, 49 N.E. 667 (1898)). Moreover, hierarchical churches need not notify the attorney general of their intent to transfer real property. Furthermore, the United States Supreme Court has made clear that “the Constitution proscribes court resolution of such controversies where the disagreement, at its core, is one of religious doctrine, practice and organization.” Our Lady of Vilna, 2007 WL 1575509, at \*4 (citing Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 713-14 (1976)).

Despite the broad proscription against interference in the activities of hierarchical churches, there are some instances in which the courts may intervene. “States do have a legitimate interest in providing a civil forum for the resolution of disputes over ownership of church property, ‘so long as it involves no consideration of doctrinal matters, their ritual and liturgy of worship or the tenets of faith.’” Our Lady of Vilna, 2007 WL 1575509, at \*4 (citing Jones v. Wolf, 443 U.S. 595, 600 (1979)). Jones v. Wolf introduced the principle that courts therefore may adjudicate a church property dispute as long as it is able to rely exclusively on “neutral principles of law,” deferring entirely to the ecclesiastical interpretations of all doctrinal issues. Jones, 443 U.S. at 604.

Justice Kornreich then considered the way that the New York Court of Appeals has applied this United States Supreme Court precedent. The Religious Corporation Law (RCL), she notes, provides an orderly framework for the administration of real property by religious institutions. Our Lady of Vilna, 2007 WL 1575509, at \*4. Where it is possible to apply neutral principles of law to the RCL, courts have the power to determine the controversy. To determine whether court involvement is prohibited or permitted, courts must make sure that they can restrict their analysis to neutral principles. Id. Disputes that relate in any way to a church’s membership

or internal hierarchy are nonjusticiable. Id.

Justice Kornreich found that the plaintiffs failed to satisfy their burden of showing entitlement to a preliminary injunction. First, with respect to their challenge to the replacement of Father Sawicki and the appointment of the trustees, she held that Father Sawicki and the defendant trustees had been properly replaced. Therefore, because they were not board members, they had no standing to bring the lawsuit. Our Lady of Vilna, 2007 WL 1575509, at \*5.

In addition, the judge attached significance to the fact that the defendants denied there was a plan in place to sell or transfer the Church at that time. Instead, the decisions at issue related to the closing of the Church and the transfer of the personalty inside of it. “Clearly, the decision to close the Church is one of ecclesiastical governance and not within the court’s jurisdiction. On the other hand, the question of conveying Church property can be adjudicated by applying neutral principles of law.” Id. The judge noted that both the RCL and the Church’s by-laws make it clear that the Rector, the Church trustees and the Archbishop share custody and control over the disposition of the Church’s property. The courts may apply neutral principles of law, then, to determine (1) whether the Rector and trustees have been appointed properly under these laws, and (2) whether the Rector, trustees and Archbishop have acted within their powers under these laws. If the defendants have behaved properly as to these matters, “the court cannot override their decisions.” Id., at \*6. Under this standard, the Court concluded, both the Church and the Archdiocese acted within their powers under those laws. Therefore, the court could not override their decisions. See id., at \*5-6.

#### Current Lawsuit

On August 15, 2007, the parties discontinued the first Our Lady of Vilna lawsuit with

prejudice, by so-ordered stipulation. Plaintiffs subsequently commenced this lawsuit, activating it by bringing an Order to Show Cause seeking a preliminary injunction preventing defendants from demolishing the Church.

In addition, the following factual background is relevant. According to defendants, Roseanne Nunziato has replaced Thomas G. Libonati on the Board of Trustees as one of the two lay members. Bishop Dennis J. Sullivan has replaced Bishop Robert A. Brucato as an ex officio trustee. In addition to these two trustees, Claire Libonati, Cardinal Egan, and Rector Reverend Monsignor Thomas E. Gilleece serve on the Board. Defendants state that the Board approved the decision to demolish the Church at its October 22, 2007 meeting.

The Court also notes that, as indicated earlier, plaintiffs identify themselves as members – that is, parishioners – of the Church.

Because of her involvement in the earlier action, this matter originally was referred to Justice Shirley Werner Kornreich. After oral argument, Justice Kornreich signed the Order to Show Cause, which temporarily enjoined defendants from demolishing the Church. In particular, she stated that this matter should be stayed until the Court of Appeals decided whether to grant leave to appeal in Committee to Save St. Brigid v. Egan, 45 A.D.3d 375, 846 N.Y.S.2d 30 (1<sup>st</sup> Dept. 2007). Because “the law might change should the Court of Appeals accept leave,” the judge reasoned, it was appropriate to “keep everything status quo” while the issue was pending in the Court of Appeals. Blaudziunas v. Egan, Index 102183/2008 (Sup. Ct. N.Y. County Feb. 8, 2008)(Transcript of Oral Arg., at pp. 10-11).

Subsequently, Justice Kornreich recused herself from this case and the case was transferred to this Part. Before the Court are the motion for a preliminary injunction and a

separate motion, by defendants, to dismiss this action based on Justice Kornreich's decision in Our Lady of Vilna.

At the time of the first decision and appeal, the defendants stated that demolition was not authorized or scheduled. After that time, however, the defendants convened a board of trustees, which included two lay trustees. Through resolution, the board approved the actions of the trustees and officers in, inter alia, applying for demolition permits. The amended complaint challenges these facts.

In light of the above precedent, the task of this Court is clear. The Court notes that defendants have overstated the prohibition against court involvement in real property disputes such as the one before it. Under the prevailing case law, this court does have the duty to evaluate whether the defendants have violated any guidelines relating to the decision to demolish the Church. However, it must keep in mind that its consideration is limited to neutral principles of law. If at the conclusion of its analysis the Court concludes that the defendants did not violate any neutral principles of law, the Court's job is at an end. In this, the Court is cognizant that the First Department warns against violating "the long-standing and sensible prohibition against court involvement in the governance and administration of a hierarchical church . . ." St. Brigid II, 45 A.D.3d at 376, 846 N.Y.S.2d at 31.

Initially, to the extent that plaintiffs seek to litigate whether defendants have the right to dispose of the temporal Church property, this issue was resolved in Justice Korneich's decision. This Court will not allow relitigation of the issue. Plaintiffs challenges defendants' position that law of the case or collateral estoppel bar consideration of the issue by this Court. Plaintiffs correctly note that the parties did not litigate the issue of the Church's demolition in the prior

lawsuit. However, defendants do not argue that collateral estoppel applies to that prong of the lawsuit.

In the first cause of action, plaintiffs allege that defendants violated RCL § 5 by their failure to hold a meeting with the parishioners to discuss the demolition of the Church and/or obtain authorization. In addition, plaintiffs apparently allege that the demolition violates RCL § 5 because the Church no longer provides religious and other services to the parishioners. As the Second Department has noted,

There is a well settled distinction between a church as a religious corporation and the same church as a religious society. The corporation, its trustees, and any other persons entitled to vote at corporate meetings have jurisdiction over the property and temporal affairs of the church, while the religious society consisting, *inter alia*, of the worshipers, has authority over spiritual matters.

Islamic Center of Harrison, Inc. v. Islamic Science Foundation, Inc., 216 A.D.2d 357, 357-358, 628 N.Y.S.2d 179, 179 (2<sup>nd</sup> Dept. 1995). Justice Kapnick also expressly rejected this argument in St. Brigid II, Index No. 110443/2006, at 13-17. The parishioners are members of the society and absent an express provision, they do not have membership in the corporation or have rights with respect to the property. Id., at 15. The First Department affirmed, concluding that courts should not consider this aspect of the plaintiffs' argument, as to do so would constitute an improper involvement in church affairs. See St. Brigid II, 45 A.D.3d at 376, 846 N.Y.S.2d at 31. To counter this, plaintiffs cite to Judge Kavanaugh's dissenting opinion in St. Brigid II. However, though the judge's dissent is impassioned and thorough, this Court is bound by the First Department decision and not by the opinion which dissents from that decision. Moreover, RCL §§ 5, 90, 91 and 92 vest authority for the decision to close and/or demolish a Roman

Catholic Church with the archbishop or bishop and not with the parishioners. See St. Brigid II, 45 A.D.3d at 376, 846 N.Y.S.2d at 31-32. Therefore, the Court rejects plaintiffs' argument and dismisses the First Cause of Action.

In light of this determination, the Court does not address the issue of standing or the cases the parties cite in support of their arguments more explicitly – except to note that, relying on established and binding precedent, Justice Kornreich's decision in Our Lady of Vilna includes the express determination that the plaintiffs, who were not board members, had no standing to bring a lawsuit of the type at hand.

The second cause of action states that the trustees have not passed a resolution authorizing demolition. However, apparently that issue is moot because the Board of Trustees subsequently voted to approve the demolition of the Church. Defendants have annexed the minutes of the meeting where this decision was rendered.

The third cause of action alleges that the decision to demolish the Church is a breach of fiduciary duty to the parishioners on the part of the trustee defendants. Based on the controlling precedent, this Court has no power to evaluate this issue, as that would entail an impermissible intrusion into church affairs. Plaintiffs cite to cases allegedly allowing similar claims relating to fiduciary duty. However, these cases relate to allegations of child sexual abuse, of other sexual misconduct, and/or of misconduct designed to prevent discovery of the abuse, and the principles enunciated in those cases are distinguishable in numerous respects from those involved in the case at hand. See, e.g., Martinelli v. Bridgeport Roman Catholic Diocesan Corp., 196 F.3d 409, 414 (2<sup>nd</sup> Cir. 1999); Vione v. Tewell, 12 Misc. 3d 973, 820 N.Y.S.2d 682 (Sup. Ct. N.Y. County 2006).

As stated, the Court can and should conduct a multi-faceted analysis, including a determination of whether by-laws have been violated. However, plaintiffs have failed to assert any other valid bases for change. In Our Lady of Vilna, Justice Kornreich amply addressed the by-laws and pertinent provisions of the RCL and determined the Board had been properly appointed. Here, too, defendants contend that any subsequent changes in the Board were proper, and plaintiff has not adequately countered this position. In addition, plaintiffs assert in their second cause of action that there was a violation of the by-laws. However, as stated, defendants have shown that the Board of Trustees approved the demolition at a meeting convened for this purpose. Other arguments in this regard must fail for the same reasons stated in St. Brigid II, 45 A.D.3d at 376, 846 N.Y.S.2d at 31. The Court has considered all other arguments but need not discuss them in this decision.

As stated, although defendants are incorrect in stating that courts can never review a decision to sell or demolish a Roman Catholic Church, a court's review is strictly limited to consideration of neutral principles of law. Where, as here, the authorities of the church in question have violated no neutral principles, a court's consideration must end. Therefore, it is

ORDERED that the Order to Show Cause is denied; and it is further

ORDERED that the motion to dismiss is granted and the action is dismissed, and one ~~set~~ bill of costs and disbursements are awarded to defendants.

Dated: 11/18/05

ENTER:

*Lby*  
 \_\_\_\_\_  
 Hon. Louis B. York, J.S.C.

**FILED**  
 NOV 24 2008

**LOUIS B. YORK**  
**J.S.C.**