

**Matter of Metropolitan N.Y. Synold of the
Evangelical Lutheran Church in Am. v St. John's
Evangelical Lutheran Church**

2008 NY Slip Op 33706(U)

April 8, 2008

Supreme Court, New York County

Docket Number: 118731/2006

Judge: Paul G. Feinman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 52

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In the Matter of the Application of METROPOLITAN
NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN
CHURCH IN AMERICA, individually and as administrator,
Petitioner,

-against-

Index No. 118731/2006
Mot. Seq. Nos. 001 & 002
Cal. Nos. 14 & 15
Submission Date 1-16-08

ST. JOHN'S EVANGELICAL LUTHERAN CHURCH,
EILEEN SINGLETON, ROSE AUGUSTE, LORRAINE
LETT and NELLIE SAUNDERS, WILFORD MORRIS and
JOHN DOE 1 through 5 and JANE DOE 1 through 5,
Respondents.

DECISION

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Appearances:

For Petitioner:
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For Respondents:
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PAUL G. FEINMAN, J.:

Motions bearing sequence numbers 001 and 002 are consolidated for disposition.

Petitioner Metropolitan New York Synod of the Evangelical Lutheran Church in America (NY Synod) is the synod, or organizational unit, which coordinates the work of the Evangelical Lutheran Church in America (ELCA) with respect to member church congregations within the geographical area of New York, which includes Bronx County. NY Synod has its principal offices at 475 Riverside Drive, New York, New York. Respondent St. John's Evangelical Lutheran Church (St. John's) is a member congregation of both the NY Synod and ELCA, and is located at 1343 Fulton Avenue, Bronx, New York. Respondents Eileen Singleton, Rose August, Lorraine Lett, and Nellie Saunders are congregants at St. John's and members of St. John's

Congregation Council, which is analogous to a board of directors. Respondent Wilford Morris is alleged to be an individual holding himself out to be the pastor of St. John's despite the fact that his name is not included on the roster of ELCA clergy. John Doe and Jane Doe 1-5 are identified as members of St. John's Congregation Council who have custody and/or control over St. John's financial and/or other records.

An examination of the record reveals that since approximately 2002, substantial discord has evolved among St. John's congregants concerning, among other things, the choice of pastors and sextons, as well as policies and positions on certain social and political issues. Polarization and unresolved disputes between factions within the congregation resulted in certain actions taken by the NY Synod, including the imposition of Synodical administration, the process by which the NY Synod takes charge and control of St. John's' real and personal property in an effort to preserve the mission and ministry of ELCA. Respondents do not accede to either the imposition of, nor the consequences of, Synodical administration on their church and congregation, which is the subject of the petition before the court.

According to petitioner, it was advised by congregants of St. John's that St. John's was no longer functioning as a congregation. Reportedly, active membership was down to less than 50, attendance at Sunday worship was less than 15, church facilities were not fully utilized, church expenses exceeded its income, the congregation did not have a pastor from the roster of approved ELCA clergy, actions were being taken which were contrary to the doctrine and scripture, as well as contrary to the mission and ministry of St. John's, NY Synod, and ELCA, and finally, it was reported that an attempt was being made by certain members of the church to separate or remove St. John's from both the NY Synod and ELCA. Petitioner and respondents

held meetings seeking to remedy the situation. Despite these efforts, the meetings proved unsuccessful. As a result, petitioner's Synod Counsel, akin to its board of directors, adopted a resolution for Synodical administration and a letter, dated December 6, 2005, was sent to St. John's advising them of this occurrence and requesting certain materials in furtherance of the process. The Synod Council's requests for books, financial records, and parochial reports were either ignored or refused by respondents.¹ The apparent refusal of St. John's Congregation Council to comply, and to deliver the requested materials to NY Synod triggered the instant petition for court intervention.

The petition asserts that, by virtue of the St. John's Evangelical Lutheran Church's Constitution (St. John's Const.), the Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America (ELCA Const.) and the Constitution for Synods (Synod Const.), the property of St. John's, both real and personal, passed by operation of law to the NY Synod upon the commencement of Synodical administration. NY Synod, therefore, petitions this court, under motion sequence 001, for an order and judgment directing respondents to transfer the title of all real and personal property of St. John's to the NY Synod.

Respondents have answered the petition and simultaneously moved under motion sequence 002, for an order, pursuant to CPLR 506 (a), 507, and 510 (1), transferring this matter to Supreme Court, Bronx County; and for an order and judgment dismissing the petition for failure of petitioner to plead in conformity with section 17-c of the Religious Corporation Law;

¹Petitioners also assert that respondents failed to turn over either the "mission support" or "benevolence" (monetary donations) to NY Synod and ELCA. Providing these collected funds is deemed to be part of the covenant of mutual support among/between the interdependent congregations and the NY Synod and ELCA.

or in the alternative, for an order compelling petitioner to respond to St. John's demands.

According to respondents, the NY Synod has improperly based its proposed "hostile takeover" of St. John's on hearsay and undocumented assertions, and they seek to change venue and to transfer this matter (CPLR 510) to Bronx County because the dispute involves the title to real property.

CPLR 506 (a) provides that "[u]nless otherwise prescribed in subdivision (b) or in the law authorizing the proceeding, a special proceeding may be commenced in any county within the judicial district where the proceeding is triable." CPLR 507 provides: "[t]he place of trial of an action in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property shall be in the county in which any part of the subject of the action is situated." Therefore, respondents contend that because St. John's is located in Bronx County, this special proceeding matter belongs in Supreme Court, Bronx County.

Respondents' arguments notwithstanding, NY Synod is a not-for-profit religious organization which must adhere to Not-for-Profit Corporation Law (N-PCL) § 511 (a), which states:

[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.

As NY Synod's principal offices are located at 475 Riverside Drive, in the city, county and state of New York, New York County is the proper venue for this matter, and accordingly, that branch of respondents' motion which seeks an order transferring venue to Bronx County is denied.

Turning to the merits of the petition, as a member congregation of NY Synod and ELCA,

St. John's is part of a hierarchical church system in which the activities of the member churches are subject to review and control by the regional synod, in this instance, the NY Synod. Implicit in their association with ELCA, is St. John's "pledge" to be governed by the provisions of St. John's Const., which states, among other things, that "[t]his congregation shall be an interdependent part of [ELCA] . . . and of [NY Synod]" and that "[t]his congregation is subject to the discipline of [ELCA]" (St. John's Const., § C6.01). St. John's also agreed that "[i]f this congregation ceases to exist, title to undisposed property shall pass to [NY Synod] (*id.* § C7.01).

Petitioner points out that, as a member church, St. John's adheres to the tenets embodied in its own constitution, and in the tenets of the ELCA Const. and Synod Const., which authorize the imposition of Synodical administration. Relevant section 13.24 of the Synod Const. provides, in relevant part:

[i]f any congregation of this synod has disbanded, or . . . if it is the opinion of the Synod Council that the membership of a congregation has become so scattered or so diminished in numbers as to make it impractical for such a congregation to fulfill the purposes for which it was organized or that it is necessary for this synod to protect the congregation's property from waste and deterioration, the Synod Council . . . may take charge and control of the property of the congregation to hold, manage and convey the same on behalf of this synod. The congregation shall have the right to appeal the decision to the Synod Assembly.²

According to the petition, because the Synod Council determined that the conditions at St. John's required the imposition of Synodical administration, the resolution was passed and the governing constitutions require St. John's to comply with the decision. Among the conditions which triggered the NY Synod/Synod Council's actions were: the physical structure, day-to-day

²Section 10.41 of the ELCA Const. identifies the Synod Assembly as the highest legislative authority in the synod.

management, finances, the failure of respondents to forward the “benevolence,” or donations, to the NY Synod; significantly reduced active membership and Sunday School enrollment, despite St. John’s location in a thriving community; and clergy disputes, including the “installation” of Morris as pastor despite the fact that Morris is not on the ELCA’s roster of clergy. Conclusions were drawn that, based on the above factors, St. John’s was “lacking in its ability to perform its mission and ministry,” not functioning in accordance with “the governing documents of the synod congregation,” and not practicing in fellowship with the congregations of the Church and of the Synod (Verified Petition, §§ 30 - 32).

St. John’s was twice notified, by letter, dated December 6, 2005, and by a second letter, dated, December 21, 2005, of its regional synod’s decision. These letters advised St. John’s of the decision to commence Synodical administration “and take charge and control of the property of St. John’s to preserve it for the congregation and take such measures as may be necessary to restore the pastoral care, governance, and management of the congregation to be in accord with the governing documents of the synod and the congregation” (letter dated December 21, 2005). The letter makes clear that the intent of the NY Synod is not to dissolve St. John’s, but rather, to reorganize, restructure, and rehabilitate its mission and ministry to be in accord with that of the NY Synod and ELCA.

Based on the above, the Synod Council determined that St. John’s membership had diminished to the extent set forth in Synod Const. § 13.24, and the Synod Council sought to take charge and control of the property in the manner and for the reasons set forth in Synod Const. § 13.24. Moreover, in the December 6, 2005 letter, petitioner cites its compliance with St. John’s Const. § C15.11 (and analogous Synod Const. provision, §17.11) and requests respondents’

compliance with St. John's Const. § C15.11, which states:

[w]hen there is a disagreement among factions within this congregation on a substantive issue that cannot be resolved by the parties, members of this congregation shall have access to the synodical bishop for consultation If the consultation fails to resolve the issue(s), the Consultation Committee of the synod shall consider the matter. If the Consultation Committee of the synod shall fail to resolve the issue(s), the matter shall be referred to the Synod council, whose decision shall be final.

Respondents did not appeal the decision to the Synod Assembly.

Respondents dispute the Synod Council's findings and NY Synod's ultimate authority to impose Synodical administration and to take title to St. John's real and personal property.

Respondents assert that title to St. John's property always remains with the congregation, and that their failure to appeal to the Synod Assembly stems from lack of adequate notice of the Synod Council's decision. Their claim of lack of notice is refuted by the letter written by their attorney, dated December 20, 2005, which responds to petitioner's December 6, 2005 letter, and states, among other things, that respondents did not intend to comply with the notice and request for documents (see Petitioner's Aff. in Opp., exhibit B).

The primary purpose of New York's Religious Corporation Law (RCL) "is to provide an orderly method for the administration of the property and temporalities dedicated to the use of religious groups, and to preserve them from exploitation by those who might divert them from the true beneficiaries of the corporate trust" (Morris v Scribner, 69 NY2d 418 [1987]). In support of their respective positions, both parties rely on various sections of St. John's Const., the ELCA Const., and the Synod Const., and both sides also reference RCL § 17-c (2), which provides, in relevant part, that the "relationship between a congregation of the [ELCA] and the church may be terminated" if:

(a) (iii) [t]he membership of the congregation becomes so scattered or diminished in numbers as to make it impracticable for such congregation to fulfill the purposes for which it was organized. In such case, the synod in order to protect the property from waste and deterioration, through the synod council or trustees appointed by it, may take charge and control of the property of the congregation to hold, manage, and convey the same on behalf of the synod. The congregation shall have the right to appeal the decision to the synod assembly[.]

With respect to the issue of title to church property, RCL § 17-c (2) (c) dictates that title to property resides with the congregation “[s]ubject to the provisions of the governing documents of congregations,” and RCL § 17-c (2) (c) (ii) provides that “[t]itle to the undisposed property of a congregation that ceases to exist by virtue of . . . [RCL § 17-c (2) (a) (iii)], shall pass to the synod of this church to which the congregation is related[.]”

The St. John’s, ELCA, and Synod constitutions recognize that when a determination has been made that the membership of a particular congregation has so diminished as to render it impractical for the congregation to fulfill its purpose or that “it becomes impracticable to protect its assets from waste and deterioration, the Synod has the right to take charge and control of all property of the congregation and to hold, manage or dispose of such property” (Upstate N.Y. Synod of the Evangelical Lutheran Church in Am. v Christ Evangelical Lutheran Church of Buffalo, 185 AD2d 693 [4th Dept 1992]). The failure of St. John’s to exercise its right to appeal renders the decision of the Synod Council final (St. John’s Const., § C15.11).

Although resolution may affect real property, the parties’ dispute involves the internal procedures followed by the hierarchical governing authority of the ELCA and NY Synod in addressing conditions at one of its member churches.

[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these

matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decision as binding upon them

(Serbian Eastern Orthodox Diocese for United States of America and Canada v Milivojevich, 426 US 696, 725, reh denied 429 US 873 [1976]).

Finally, respondents' arguments and submissions do not meaningfully refute the Synod Council's informational data and findings. Rather, respondents, who frame the matter as a property dispute, challenge the Synod Council's conclusions and seek evidence tending to show that petitioners did not follow proper procedure and/or demonstrate an understanding of the social and political issues facing St. John's today. Respondents' blunderbuss demand for depositions and unspecified documents relating to any and all correspondence between the synod and members of St. John's, documents relating to the organization, purpose, and duties of the synod, and documents relating to the hierarchical workings of ELCA, are overly broad, and supervision of this discovery would impermissibly ensnare this court in matters of ecclesiastic law and policy. Petitioner has established its right to the declaratory and injunctive relief sought in the petition and the petition is granted.

Settle order and judgment in accordance with this decision on at least ten days' notice.

Dated: April 8, 2008
New York, New York



J.S.C.

HON..PAUL G. FEINMAN