

<b>Matter of Brighton Way, LLC</b>
2009 NY Slip Op 30675(U)
March 20, 2009
Supreme Court, Queens County
Docket Number: 13606/08
Judge: Patricia P. Satterfield
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**NEW YORK STATE SUPREME COURT - QUEENS COUNTY**

Present: HONORABLE PATRICIA P. SATTERFIELD IAS TERM, PART 19

Justice

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In the Matter of the Application of  
BRIGHTON WAY, LLC. A mortgagee  
for an order confirming a mortgage to  
QUEEN ESTHER'S TEMPLE, INC.,  
A religious corporation,

Index No.: 13606/08  
Hearing Date: 1/7/09  
Final Submission Date: 1/28/09

Petitioner,

Decision and Judgment After Hearing

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This is a special proceeding instituted by petitioner Brighton Way LLC (“petitioner”) for a judgment confirming, *nunc pro tunc*, a mortgage and note executed and delivered on August 11, 2004, to petitioner by respondent Queen Esther’s Temple, Inc. (“respondent”) in the amount of \$140,000.00, to be repaid in sixty (60) monthly installments of \$1,280.64, for the purchase of property located at 109-35 Farmers Boulevard, St. Albans, NY. On February 1, 2006, and every month thereafter, respondent defaulted in its monthly mortgage payment. On January 8, 2007, petitioner commenced a foreclosure action entitled *Brighton Way, LLC v. Queens Esther’s Temple, et al.* (Index No. 588.07) in the Supreme Court, Queens County. By decision dated May 2, 2008 (Rios, J.), the foreclosure action was dismissed, on the ground, inter alia, that the mortgage was a nullity because, in violation of section 12 of the Religious Corporation Law, prior court approval was not obtained. Thereafter, the instant special proceeding was instituted for an order confirming the mortgage at issue. By decision dated August 22, 2008 (Cullen, J.), the Court set this matter down for a hearing to determine the “advisability of the transaction in the first instance.” Following the presiding judge’s recusal, the matter was reassigned to Part 19, and the hearing was conducted on January 7, 2009. Respondent did not appear by counsel; Neal Wright, the alleged Chairman of the Board of Trustees for respondent did appear. This Court considered the testimony given and exhibits offered at the January 28, 2009 hearing; transcripts of prior proceedings, including the March 10, 2008 hearing before the Honorable Jaime Rios; the papers submitted on the motion before the Honorable Lawrence V. Cullen together with his August 12, 2008 decision; and the December 4, 2008 order of the Appellate Division, Second Department, dismissing the appeal filed on behalf of Respondent. Based upon the foregoing, this Court makes the following Findings of Facts and Conclusions of Law.

Findings of Facts

The evidence established that William Greenspan (“Greenspan”), petitioner’s managing member, and Neal Wright (“Wright”) of Total Financial Services, had a long standing business relationship, characterized by Wright seeking mortgages from Brighton Way on behalf of people or

entities in financial difficulties. Greenspan testified at the January 7, 2009 hearing that “Brighton Way was set up to take money from what started out as my mother and lend that money out at a higher interest rate so that she could obtain more money for the little money she had left.” He described his interaction with Wright, the purported Chairman of the Trustee Board of respondent Queen Esther’s Temple, as a relationship whereby, at the time, Wright “was working with Brighton Way . . . [and who] brought the mortgage to Brighton Way [whom he had] worked with. . .for over ten years:”

Mr. Wright indicated to me that he had this property. It was church property. He was head of the church at this point. He needed money in order to pay off liens that were on the church to fix up the church, to reopen the church, which was at that point closed. He came to me with his own title report. He had ordered the title report at that point from a Junction Abstract. He indicated he needed— we worked backwards at \$140,000. Of that \$140,000.00, I indicated that they needed to take enough money to clear the vacate order. There was a violation called a vacate order because of the conditions inside although I never seen the inside of the property. I indicated that if the loan was to be made, it had to be where enough money would be held in escrow to get rid of that violation. There was a water and sewer judgment against them for many thousands of dollars. He indicated to me that he had no other ability to get any of this money because it was— the closed church at this point and it had no income. I indicated to him that we would have to hold some money for the actual mortgage payments. Because he wouldn’t have any income for a while. The agreement was that his attorney, the church’s attorney, Vernita Charles, would hold the first year’s payment. It was an interest only mortgage for five years, and she held that money. She held \$25,000.00 to get rid of the vacate order. We paid off the water and sewer judgment. There was another small escrow for the water meter. The balance of the funds after closing costs were disbursed to the church.

Counsel for petitioner stated that he did not have minutes of a board meeting; but he had the opinion letter of Vernita Charles, respondent’s alleged attorney who, by letter dated August 11, 2004, stated:

As Counsel for the church, Queen Esther’s Temple Inc., it is my professional opinion, after reading the Church By Laws, and the minutes of the Board Meeting dated 12 March 2004, Mr. Neal Wright is authorized by the Board of Trustees, to duly execute a mortgage on behalf of the church Queen Esther’s Temple Inc.

In that letter, Vernita Charles listed as the officers of the Board and the Board of Trustees of respondent, the following:

OFFICERS

Ann Williams- Secretary  
Charles Ellis- Member  
Leonard Steward- Member

BOARD OF TRUSTEES

Neal Wright-Chairperson  
Charles Ellis-Member  
Leonard Steward- Member

She concluded that, “Mr. Neal Wright has the authority to execute on behalf of the religious corporation all documents to affect the loan and mortgage as above stated.”

In answer to the Court’s query as to whether there ever was a viable entity, Mr. Greenspan further testified:

My understanding was that before the vacate order, there was a viable church. That’s what I was told. That because they couldn’t use the building physically that they had to get it back open so that they could hold services, whatever appropriate services, Sunday school, whatever the case may be. But it was not a church that had just started as you see in the deed, Judge. Judge this church had been in existence for a period of time and had gotten this property, well, now almost 30 years before the mortgage, so it was an ongoing entity from at least 1970– I forget the date – ‘75 or ‘76 when they purchased the property all the way through to 2004. It had to be an ongoing entity. It maintained the building for some period of time until it came into disrepair.

On the question of the “advisability of the transaction in the first instance,” Mr. Greenspan testified:

I don’t want to restate exactly what was said, Judge, but the chairman of the trustee board comes and says I want to be able to utilize the church property. The church wants to be able to have parishioners. It wants to open up and build itself. It has a piece of property– whatever equity the church had in the property is now valueless in that moment in time because they can’t use the building. They could not go to anyone else and get a loan. They wanted the money for the specific purpose of doing the work that’s necessary, [to] clear the vacate order. They were going to be foreclosed because they had this other judgment for the water and sewer that hadn’t been paid and that

would have led to the loss of the piece of property at the time which was the main asset of the church. Therefore, in order to clear up the judgment, not lose the property, do the work, clear the violation, and then open the church for its members and parishioners, the church asked that the loan be made in the interest of the church as a viable entity. If not for the loan, you then move on to you wouldn't have been a building eventually because of the foreclosure and the loss because of the vacate order.

At the earlier hearing before Justice Rios, Wright testified:

All I wanted to say was, Judge, at the time that I brought the loan to Mr. Greenspan, I was not the chairman of the – I was not the chairman that was supposedly taking the loan. What happened was the person became ill and resigned from the board of Queen Esther's temple. And they needed the money. So what they did was they asked me to oversee the whole renovation and everything because they know me.

He also testified, in response to Justice Rios' question as to how he became aware of Queen Esther's Temple:

Okay. It was – first what happened was there was a lien, a tax lien in the newspaper or something. Some sort of lien. And I found the person who the tax lien belonged to and it was Queen Esther's Temple.

He further testified that he spoke to Miss Mae Williams, whose name he found by going through public records related to Queen Esther's Temple, who ultimately called him and asked him to get a loan. Mr. Wright further testified:

In the beginning, it was going to be Mae Williams initially to do the signature. When she couldn't make it, I told Mr. Greenspan because this was just going to be another loan that I referred to him. But when she couldn't make it, he had said look, you know the loan is set up and everything, so then he said – well, I said. Well. I can do it. He said if you do it, it has to be something from the attorney saying that you're authorized. So then I contacted Ms. Charles and she went to them and they had some type of meeting. You know. I don't know. I didn't do it. But, you know, a small meeting of the members of the trustee board.

He stated that he received a check for \$70,000.00, which he deposited in the bank account of respondent that he opened, and wrote checks on that account.

After consideration of the evidence, it is the finding of this Court that the mortgage at issue was signed by Wright, purportedly on behalf of respondent, as a mere convenience. At issue is whether the facts presented can meet the legal requirements for this Court to exercise its discretionary authority to issue a confirmatory order of the mortgage at issue.

### Conclusions of Law

The transaction at issue is governed by the Religious Corporations Law (“RCL”) and the Not-for-Profit Corporation Law (“N-PCL”). Section 5 of the RCL provides that “[t]he trustees of every religious corporation shall have the custody and control of all the temporalities;” subdivision one of section 12 of the RCL requires a religious corporation to apply for and obtain the court’s permission in order to mortgage any of its property. N-PCL §§ 511(a)(7) and (8) provide that a petition seeking court approval for the transaction must set forth that the trustees of the religious corporation, and, if necessary, the members thereof, have validly authorized and consented, respectively, to the transaction. Where, as here, “a religious corporation fails to obtain the necessary judicial approval . . . , the corporation may seek retroactive judicial approval in order to validate the transaction (see Religious Corporations Law § 12[9] ).” Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. v. Congregation Yetev Lev D'Satmar, Inc., 9 N.Y.3d 297 (2007). Section 511(d) of the N-PCL provides that the court may authorize the sale if it appears to the court’s satisfaction that “the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interest of the members will be promoted. Levovitz v. Yeshiva Beth Henoch, Inc., 120 A.D.2d 289, 295-296 (2<sup>nd</sup> Dept. 1986).

The greatest impediment to this Court’s confirmation of the mortgage at issue is whether it was validly executed on behalf of respondent. It is well-recognized that “individual board members are nowhere given the authority to act on behalf of the religious corporation (see, Matt of Cong. Anshe Kesser [Jewish Community Ctr.], 5 A.D.2d 1011, 1012 [2d Dept.1958]; Krehel v. Eastern Orthodox Catholic Church, 22 Misc.2d 522, 523-24 [NY Co 1959], affd 12 A.D.2d 465, affd , 10 N.Y.2d 831). ‘Only when acting as a board may trustees of religious corporations perform or authorize acts binding on the corporation’ ( see Krehel, 22 Misc.2d at 524; Religious Corporations Law § 5).” Berlin v. New Hope Holiness Church of God, Inc.,93 A.D.2d 798 (2<sup>nd</sup> Dept. 1983). Here, the record before this Court is bereft of any proof not only that a Board of Trustees existed for respondent at the time that Wright purportedly signed as Chairperson, but, aside from the letter of respondent’s attorney, there is no proof that the loan and mortgage at issue or the vesting of signing authority in Wright was approved as required by section 510(a)(2) of the N-PCL. The purpose of the statutory requirements is to protect the members of the religious corporation, the real parties in interest, from loss through unwise bargains and from perversion of the use of the property.

Moreover, even assuming a showing of the requisite approval and authorization, this Court nonetheless would be constrained to confirm the mortgage by the decision of the Appellate Division, Second Department, in Church of God of Prospect Plaza v. Fourth Church of Christ, Scientist, of Brooklyn, 76 A.D.2d 712, 717-718 (2<sup>nd</sup> Dept. 1980), aff'd, 54 N.Y.2d 742 (1981), which set forth guiding principles for courts to determine whether court approval should be given, stating:

It thus appears that the Legislature intended the test to have two prongs. First, the court must determine that the terms and consideration of the transaction were not unwise. In assessing the prudence of the bargain, it is our view that the court should look to the conditions prevailing at the time it was struck. Measured in that light, we agree with the Referee that the contract between petitioner and respondent was fair and reasonable when made. However, the second prong of the test requires the court to determine that the sale would benefit the corporation or that the best interest of its members would be promoted thereby. We hold that in applying this second prong of the test the court may consider whether corporate purposes would have been served or the best interests of the membership promoted at the time the contract was made, but it should be guided primarily by whether those ends would be realized in light of conditions prevailing at the time the issue is presented to the court (cf. Wilson v. Ebenezer Baptist Church, 17 Misc.2d 607, 608-609, 187 N.Y.S.2d 861).

Thus, “in making the determination required by section 12 of the Religious Corporations Law and section 511 of the Not-For-Profit Corporation Law the court must either ‘ratify or veto’ the contract of the parties (citation omitted). It thus appears that contracts for the sale of the real property of a religious corporation are valid, subject to being defeated by the veto of the court, i.e., they are voidable by the court where the two-pronged test of subdivision (d) of section of the Not-For-Profit Corporation Law has not been met.” Id., 76 A.D.2d at 717-718. As a result, the Second Department stated, [f]or the reasons stated above, we cannot approve the sale of respondent's property under the present conditions and therefore the contract of sale between it and petitioner is vetoed and rendered inoperative.” Id.

Application of the this rationale to the instant case compels a similar result. The transaction at issue is highly suspect, given the relationship between petitioner and Wright, and the methods employed by Wright to establishing a relationship with Ms. Williams, who was associated with respondent Queens Esther’s Temple. Equally troublesome is Wright’s receipt of \$70,000.00 from petitioner and his opening of a bank account ostensibly on behalf of respondent and his writing checks on that account for reasons unknown. On the facts of this case, there is no basis for this Court to find that “the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interests of the members will be

promoted.” (N-PCL 511 [d]; see Church of God of Prospect Plaza v. Fourth Church of Christ, Scientist, of Brooklyn, supra).

Conclusion

Based upon the foregoing, the petition for a judgment confirming, *nunc pro tunc*, a mortgage and note executed and delivered on August 11, 2004, to petitioner Brighton Way LLC by respondent Queen Esther’s Temple, Inc., in the amount of \$140,000.00, for the purchase of property located at 109-35 Farmers Boulevard, St. Albans, NY, is denied, and the petition hereby is dismissed.

Dated: March 20, 2009

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J.S.C.