

Smith v United Church of Christ

2011 NY Slip Op 30205(U)

January 19, 2011

Sup Ct, New York County

Docket Number: 111455/10

Judge: Milton A. Tingling

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

PRESENT: **Milton A. Tingling**

PART 47

Index Number : 111455/2010
SMITH, GEORGE BUNDY, SR.
 vs.
UNITED CHURCH OF CHRIST
 SEQUENCE NUMBER : 001
 PREL INJUNCTION/TEMP REST ORDER

INDEX NO. _____
 MOTION DATE 12/22/10
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

on this 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

*Decision in accordance with attached
 memorandum of decisions*

FILED
 JAN 28 2011
 NEW YORK
 COUNTY CLERK'S OFFICE

Dated: 1/19/11 _____ mat _____ J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
 Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

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

PRESENT; Honorable Milton A. Tingling
Justice

Part 44

-----X Index No.:111455/10

George Bundy Smith, Sr., Individually and on Behalf of
Twenty Plus Member of Grace Congregational Church of
Harlem, Inc./United Church of Christ,

Plaintiff,

Decision

-against-

FILED

JAN 28 2011

NEW YORK
COUNTY CLERK'S OFFICE

The United Church of Christ, Rev. Geoffrey Black, Rev. Rita
Root, Rev. Freeman Palmer, Dr. Michael Ward Caine, Rev.
Noel D. Vanek, Rev. Dr. Ronald Wells, Rev. Nigel Pearce, Rev.
David Tucker, Cynthia James Rodriguez, Alethia West and
Ivy Simons,

Defendants.

-----X

This matter involves a dispute between the individual George Bundy Smith Sr. and allegedly
Twenty Plus Members of Grace Congregational Church of Harlem ("Church") and the current licensed
minister of the "Church" and its Board of Trustees.

The Plaintiffs have sued the Central United Church of Christ ("UCC"), its president Rev. Geoffrey
Black ("Black"), six other members of the central church, individually and in their official capacities. In
addition, they sued Rev. Nigel Pearce, individually and as a licensed minister of the "Church" and
Cynthia James Rodriguez individually and as Board Chair of The Church; Alethia West individually and
as Chair of The Selection Committee and Ivy Simons, individually and a Chair of the Board of Deacons.

There are fifteen causes of action alleged in a twenty five page, one hundred and thirteen
paragraph complaint. The tenth cause of action seeks monetary damages for the inability to rent property
belonging to the church; the eleventh cause of action seeks reimbursement for repairs made to the same
property; the thirteenth cause of action seeks repayment of a loan made to Rev. Nigel Pearce; the fourteenth

cause of action seeks repayment of a loan made to the church and the fifteenth cause of action seeks attorneys fees.

All other causes of action seek, with the possible exception of the fifth cause of action which alleges a breach of contract, that the Court intervene in internal congregational matters and compel behavior of the church's members board of trustees.

The "UCC" parties cross move to dismiss as improper parties and on other grounds.

In opposition to the cross motion, Plaintiff alleges that they are proper parties. The UCC Defendants had apparently granted Rev. Nigel Pearce status as a Licensed Minister. Pursuant to the Constitution of The United Church of Christ, By Laws of the United Church of Christ Article I sects. 151 and 152 speaks to recognition and authorization of a Licensed Minister (Exhibit #3 to the cross motion). Section 152 reveals that a license may be granted by the United Church of Christ for not more than one year at a time to serve in a designated Local Church. Following a review the license may be renewed. There appears to be no limit as to the times said license may be renewed.

The complaint against the UCC Defendants is based entirely upon an alleged liability due to their licensing of Rev. Pearce.

The "UCC" and the "Church" are so called congregational churches with the "UCC" being the central church.

The complaint against the UCC Defendants cannot prevail. Pursuant to the Constitution and By Laws of the United Church of Christ Article V sect 18, "The autonomy of the Local Church is inherent and modifiable only by its own action. Nothing in this Constitution and the By Laws of the United Church of Christ shall destroy or limit the right of each local Church to continue to operate in the way customary to it; nor shall be construed as going to the General Synod, or to any Conference or Association now, or at any

future time. The power to abridge or impair the autonomy of any Local Church in the management of its own affairs, which affairs include, but are not limited to, the right to retain or adopt its own methods of organization, worship and education; to retain or secure its own charter and name; to adopt its own constitution and by laws; to formulate its own covenants and confession of faith; to admit members in its own way and to provide for their discipline or dismissal; to CALL OR DISMISS IT'S PASTOR OR PASTORS by such procedure as it shall determine; to acquire, own, manage and dispose of property and funds; to control its own benevolences; and to withdraw by its own decision from the United Church Of Christ at any time without forfeiture of ownership or control of any real or personal property owned by it.

Further, the Plaintiff seeks an order from the Court enjoining Grace Congregational Church of Harlem, Inc. and yet, they are not named as a party to this action. Therefore, even if the action was viable, there is no proper party named to effectuate enforcement.

Also, while the UCC Defendants lack the jurisdiction and authority to compel the named and un named parties to comply with the requested relief, the Grace Congregational Church of Harlem does not.

The Constitution and By Laws of Grace Congregational Church of Harlem, Inc. as amended January, 1991, Article III, By Laws entitled Officers sect. 1. Pastor, paragraph 4 states "the term of Pastor shall be indefinite, however; the church may at any time by a majority vote of those present and voting at a special meeting called for the purpose; request the Pastor's resignation".

Article II of the same By Law entitled Meetings section 2(c) states "Special meetings for businesses may be called by the pastor, the deacons, the trustees or the church council or shall be called by the church clerk, or written request of twenty adult members of the church. The nature of the business to be transacted shall be stated in the call.

The Plaintiff also sues on behalf of twenty plus members of Grace Congregational Church of Harlem.

The Plaintiff fails to name or delineate in any way such members and therefore has no standing to sue on their behalf. (See Not For Profit Corporation Law sect 623 (b))

As to Plaintiff's request that the Court apply the so called "neutral principles of law" analysis involving consideration of the deeds state statutes governing the holding of church property, the local churches charter and the general churches constitution, at the moment there is not proper controversy subject to this Court's possible jurisdiction, and therefore the request is denied. See Jones v Wolf, 443 U.S. 595 (1979)

The motion for a preliminary injunction against the "UCC" is hereby denied and the cross motion by "UCC" to dismiss is granted.

The motion for a preliminary injunction against the "Church" is hereby denied. All causes of action except the thirteenth and fourteenth and fifteenth are dismissed. Those causes of action remain viable only as to George Bundy Smith Senior, individually and are dismissed on behalf of Twenty plus Members of Grace Congregational Church of Harlem, Inc.

Settle Order on Notice.

1/19/11
Date

FILED
JAN 28 2011
NEW YORK
COUNTY CLERK'S OFFICE

mat
J. S. C.
Judge Milton A. Tingling