

**Congregation of H.O.P.E.-L.I.F.E. Noah's Ark
Church, Inc. v Ramirez**

2011 NY Slip Op 31518(U)

June 1, 2011

Supreme Court, New York County

Docket Number: 114662/2009

Judge: Saliann Scarpulla

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

SALIANN SCARFOLLA

PRESENT: _____ J.S.C.

PART _____

Justice

Index Number : 114662/2009
 CONGREGATION OF H.O.P.E.
 VS.
 RAMIREZ, RICHARD
 SEQUENCE NUMBER : 003
 PARTIAL SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Motion or 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

and cross-motion are

denied in accordance with
memorandum decision.

FILED

JUN 08 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/7/11

Saliann Scarfolla
SALIANN SCARFOLLA
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: PART

-----X
CONGREGATION OF H.O.P.E. - L.I.F.E.
NOAH'S ARK CHURCH, INC.,

Plaintiff,

Index No. 114662/09

-against-

REVEREND RICHARD RAMIREZ and ROBERT M.
MANNERS,

Defendants.

FILED

JUN 08 2011

NEW YORK
COUNTY CLERK'S OFFICE

-----X
PRESENT: Saliann Scarpulla, J.S.C.:

In this action challenging the election of a pastor, plaintiff Congregation of H.O.P.E. - L.I.F.E. Noah's Ark Church, Inc. ("the church"), moves for partial summary judgment on its first cause of action, seeking a declaratory judgment that a meeting of the church's congregation held on November 25, 2007 was held in violation of Religious Corporations Law (RCL) § 194, and that the vote taken then to elect defendant Richard Ramirez ("Rev. Ramirez") temporary pastor, and a February 10, 2008 vote putting new by-laws in place, and making Rev. Ramirez's election permanent, were in violation of RCL § 195, voiding the election. Defendants cross-move for summary judgment in their favor.

I. Background

The church is made up of a small, and aging, congregation, having its inception some 40 years ago by Reverend Irene Bonder Fink ("Rev. Fink"). Rev. Fink died in October 2007.

This action is brought by the church, personified by Rev. Fink's daughter, Janine Pagan ("Pagan"), who is also, apparently, administrating her mother's estate.

The only material asset owned by the church is a building it purchased in 1977, located at 740 East 6th Street, New York, New York ("the building"), which now, apparently, has a value of more than \$3 million. Rev. Fink had no ownership interest in the building.

In 2006, the main chapel in the building was rented to the House of God United Pentecostal Church International (HOGUPC), a church led by Rev. Ramirez. Defendant Robert M. Manners (Manners) is assistant pastor to Rev. Ramirez in HOGUPC, and an attorney. Because HOGUPC used the main sanctuary, the church used Rev. Fink's apartment in the building for the holding of its services. The church and HOGUPC had separate congregations, and, prior to Rev. Fink's death, never held shared services.

Following Rev. Fink's death, the church became aware of a controversy, initiated by Oleh Farmiga ("Rev. Farmiga"), who claimed to be a member of an umbrella organization under which the church was affiliated. The church claims that Rev. Farmiga, in an attempt to gain control of the building, instructed all of the church's tenants, including HOGUPC, to cease paying rent to the church. Allegedly, Rev. Farmiga's larger organization intended to dissolve the church, and take over its valuable asset.

Rev. Ramirez and Manners approached Pagan with a plan which they claimed would protect the church, and the building, as well as HOGUPC's right to rent the sanctuary therein,

from Rev. Farmiga. Defendants urged Pagan to hold a special meeting of the church's congregants, at a joint service of the church and HOGUPC, to address the situation.

According to Pagan, Manners held himself out as being someone who, as an attorney, had helped troubled churches before, who knew how to solidify the church's corporate identity, and protect its autonomy and its property. For instance, he proposed new by-laws for the church, giving Pagan a sample "corporate kit" to review. Notice of Mot., Ex. 8, at 37. It was understood that Manners's proposals would allow HOGUPC to continue to use the building for its services, and for Pagan to remain as a resident in the building, with no intent to dispose of the property.

A special meeting was held on November 25, 2007 ("the November 2007 meeting") to discuss Manners's ideas. The meeting was comprised of as many members of the church's congregation as Pagan could recall, whom she personally called to tell about the meeting, as well as some church members who had also attended HOGUPC's services. Also present at the November 2007 meeting were some HOGUPC members who had never attended the church's services.

Notifying the church's original congregants was complicated by the coincidence that all of the church's corporate books, records and funds had been stolen on the day of Rev. Fink's funeral. Pagan maintains that no notification of the meeting was posted anywhere in the building prior to the meeting, although Rev. Ramirez claims that notice of the meeting was "taped ... to the outside front door of the sanctuary, as well as inside of the sanctuary by

the bulletin board.” Ramirez Aff., ¶ 4, Defendants’ Opp., Ex. B. He also claims to have posted the date of the meeting on the overhead projector during HOGUPC services, and announced the meeting at all services up to two weeks before the meeting.

At the November 2007 meeting, and at Manners’s suggestion, Rev. Ramirez was voted temporary pastor of the church.¹ At that time, three HOGUPC members, including Manners and Rev. Ramirez’s wife, became three of the church’s six trustees, on a vote of church congregants. Each of the three trustees from the church were long-time congregants, including Pagan. Using the “corporate kit” provided by Manners, the attending church members voted in an Amended Certificate of Incorporation and new by-laws, to replace the stolen corporate documents.²

Defendants provide 10 three-page “Applications For Voting Membership Status” in the church, which were executed at the November 2007 meeting, by members of both the church and HOGUPC. Membership Forms, Defendants’ Memorandum in Opp., Ex. D. Pagan is a signatory to a membership form, as is her husband, Manners, Manners’s wife, Rev. Ramirez and his wife, among others. In these forms, in summary, the 10 signatories avow, in detail, their conviction to abide by the beliefs of the church. The Membership Forms end with the words, “[w]ith this petition I am hereby making formal application to

¹ However, despite the representation by Manners that Rev. Ramirez’s position was to be temporary, Pagan notes that the by-laws designated Ramirez’s position as permanent.

² Apparently, Manners never attempted to retrieve the original documents from the County Clerk’s office.

acquire voting status” in the church. *Id.*, unnumbered p 1. Pagan does not address these forms in any manner.

As a final act, the members attending the November 2007 meeting ratified an agreement whereby Rev. Ramirez and the three new trustees would resign in 90 days unless their continuation in those positions was approved by the church’s congregants.

Despite that time-frame, in the beginning of 2008, Rev. Ramirez proposed that he be voted in as permanent pastor of the church, in order to protect it from the potential, and imminent, depredations of Rev. Farmiga. At a meeting of the new board of trustees held on January 20, 2008, the board proposed to do away with the 90-day period, and immediately elect Rev. Ramirez as pastor. The proposition required a meeting of the church congregation. To this end, another special meeting of the congregation was called for February 10, 2008 (“the February 2008 meeting”).

Only 12 people attended the January 2008 meeting. Five of the church congregants who had voted in the November 2007 meeting were not present at this meeting. The majority of those in attendance were HOGUPC members, who had never been active in the church’s affairs, but who had signed the membership forms. It is unclear how many of the church’s original congregants were present. Three additional congregants voted by proxy, although it is unclear if these were church members or HOGUPC members, or HOGUPC members who had signed the membership form.

At the January 2008 meeting, Rev. Ramirez was voted in as the church's permanent pastor, and the new by-laws making his position essentially permanent, and his ouster extremely difficult, were voted in as well.

The church brings this action claiming that the meetings to place Rev. Ramirez in power over the church, and over its one valuable asset, the building, were part of a scheme to exploit the church in its time of weakness, and that the two meetings, and the votes taken therein, were illegal under the RCL. The church moves for partial summary judgment for a declaration that (1) defendants violated the RCL by calling the November 2007 meeting without proper notice; (2) took votes from unqualified voters at the February 2008 meeting; (3) improperly counted proxy votes at that meeting; and (4) drafted the by-laws so as to "improperly bestow upon church trustees the power to remove the pastor." Memorandum in Support, at 1. The "end result" of the actions of defendants, according to the church, "was that defendants wrongly positioned themselves to effectuate a hostile takeover of Noah's Ark" by stacking the voting deck with their own members, "assuming ownership of the sole asset of Noah's Ark - the Building." *Id.* at 10.

Defendants, on the other hand, argue that the installation of Rev. Ramirez was duly made according to law, and that defendants' only goal all along has been the well-being of the church. They point to later meetings held by the trustees in August 2008, whercin Pagan and her family sought the sale of the building, with the apparent expectation that they would receive some of the proceeds. Defendants maintain that this action was commenced when

Pagan and her family were told that they would not personally see any return from the sale of the building, as the building did not belong to them. Manners affirms that the church is growing under the lead of Rev. Ramirez, and is not threatened with dissolution or the loss of the building to any party, although, as stated above, meetings have been held where the sale of the building has been discussed, due to the difficult status of the church's finances.

II. Discussion

“The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law.”

Dallas-Stephenson v Waisman, 39 AD3d 303, 306 (1st Dept 2007), citing *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). Upon proffer of evidence establishing a prima facie case by the movant, “the party opposing a motion for summary judgment bears the burden of ‘produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact.’” *People v Grasso*, 50 AD3d 535, 545 (1st Dept 2008), quoting *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980).

If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied. *Rotuba Extruders v Ceppos*, 46 NY2d 223 (1978); *Gross v Amalgamated Housing Corporation*, 298 AD2d 224 (1st Dept 2002).

A. Standard for Review of Church-Related Decisions

In its cross motion, the church argues that this court does not have subject matter jurisdiction over this case, because its resolution allegedly involves matters of church doctrine which this court may not address.

“The First Amendment forbids civil courts from interfering in or determining religious disputes, because there is substantial danger that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs.” *Matter of Congregation Yetev Lev D'Satmar, Inc. v Kahana*, 9 NY3d 282, 286 (2007).

However, internal church disputes that can be determined by reference to “neutral principles of law” may be addressed in court. *Id.* As the Appellate Division, Second Department, held in *Rende and Esposito Consultants, Inc. v St. Augustine's Roman Catholic Church* (131 AD2d 740, 742 [2d Dept 1987]),

[w]hile it is clear that the judiciary may not interfere in disputes concerning matters of religious doctrine and practice, the courts remain free to resolve controversies involving religious groups or organizations where such matters are not implicated and where the dispute can be settled by the application of neutral principles of law [internal citations omitted].

As such, actions dealing solely with the applicability of the RCL “d[o] not violate the First Amendment prescription that religious bodies be left free to decide church matters for themselves, uninhibited by State interference, because the [issue] can be decided on the basis

of statutory interpretation and common-law precedent without reference to matters of religious belief or dogma.” *Morris v Scribner*, 69 NY2d 418, 422 (1987).

I. RCL § 194 and the November 2007 meeting

The question of whether there was sufficient notice of the November 2007 meeting is one which can be decided on “neutral principles of law,” particularly, statutory interpretation. Section 194 of the RCI is concerned with the “[t]ime, place and notice of corporate [church] meetings.” *Id.* In pertinent part, section 194 calls for the trustees of a church to give notice of a special meeting of the church:

at morning service, if such service be held, on each of the two successive Sundays next preceding such meeting, if Sunday be the regular day for such public worship, and public worship to be had thereon, or otherwise at a regular meeting of such church for public worship on each of two days, at least one week apart, next preceding such meeting, *or if no such public worship be held during such period, by conspicuously posting such notice, in writing, upon the outer entrance to the principal place of worship of such church* [emphasis supplied].

The church maintains that defendants did not give the requisite two-week notice, nor did they post notice of the November 2007 meeting as required by the statute. Obviously, notice could not be given to congregants not attending church services, because, after Rev. Fink’s passing, no services were held. And, obviously, if no services were held, no church member would be likely to see notices put up at the building, unless they attended HOGUPC services.

This is, however, irrelevant. The statute calls for the posting of notice, not personal contact with members to inform them of a meeting, and the “difficulties” providing proper

notice (as discussed in the church's Memorandum of Law, at 6), are not addressed by the statute. Thus, despite the fact that it might have been unlikely that church congregants saw the notices, or heard the announcements at the HOGUPC services, if they did not visit the building after Rev. Fink's death, defendants were only required to post notice as set forth in RCL § 194.

The question is then whether notice was properly posted under RCL § 104. In her affidavit, Pagan says that "[t]here were no signs posted before this special meeting." Pagan Aff., ¶ 13. The church adds that no copy of the notice has been provided by defendants upon discovery in this action, although notices of other meetings were provided.

Rev. Ramirez, on the other hand, states that

I posted a notice of the special meeting of the [church] on Thursday, November 8th, 2007. The notice was on a regular sized piece of paper and I taped it to the outside of the front door of the sanctuary, as well as inside the sanctuary by the bulletin board.

Rev. Ramirez Aff., ¶ 4. Manners also affirms that the notice was posted as Rev. Ramirez describes. Aff. of Manners, ¶ 9. Consequently, there is clearly a question of fact as to whether a notice was properly posted, and, as a result, it cannot be determined at this juncture whether the actions taken at the November 2007 meeting, to wit, the vote for Rev. Ramirez to become temporary pastor, and the vote on the adoption of the by-laws, are valid and binding on the church.

The court notes that the question posed here of whether Rev. Ramirez was properly voted in as pastor of the church is, as a result of the foregoing, a matter which the court may

address, despite the fact that “[a] church’s selection of its own clergy is [a] a core matter of ecclesiastical self-governance” *Beltran Sanchez v Wesleyan Church Corp.*, 218 F Supp 2d 136 , 139-140 (D Puerto Rico 2002). The issue under RCL § 194 raised here is only concerned with whether a meeting was properly called, and a vote properly taken, and does not raise “internal church discipline, faith [or] organization” *Hutchinson v Thomas*, 789 F2d 392, 396 (6th Cir 1986). This court is not reviewing Rev. Ramirez’s qualifications to be pastor of the church, and there is no discussion of theology involved in this dispute.

ii. RCL § 195 and the February 2008 meeting

The church claims that the vote taken at the February 2008 meeting installing Rev. Ramirez as permanent pastor of the church was made in violation of RCL § 195. RCL § 195 is concerned with the matter of persons qualified to vote at corporate meetings. Such qualified persons are defined as:

[a]ll persons who are then members in good and regular standing of such church by admission into full communion or membership therewith in accordance with the rules and regulations thereof, and of the governing ecclesiastical body, if any, of the denomination or order to which the church belongs, or who have been stated attendants on divine worship in such church and have regularly contributed to the financial support thereof during the year next preceding such meeting

RCL § 195 also requires that “the presence at such meetings of at least six persons qualified to vote thereat shall be necessary to constitute a quorum. The action of the meeting upon any matter or question shall be decided by a majority of the qualified voters thereon, a quorum being present.”

The church claims that, of the 11 people who voted at the February 2008 meeting, only five were original church congregants, and that the remaining six were HOGUPC members who had never been active in the church. Thus, the church argues that there was no quorum at the February 2008 meeting, and any actions taken at that meeting are void.

Based on these 10 membership Forms (one of which is signed by Pagan), defendants claim to have validly added members to the church at the November 2007 meeting, and so, had a quorum at the February 2008 meeting, and that Pagan's bald statement that there were insufficient voting members at the February 2008 meeting fails to meet her burden on summary judgment to prove that the results of the February 2008 meeting were improper and void.

Exhibit E to defendants' Memorandum of Law is the minutes to the February 2008 meeting, and includes a list of attending members. Of the attending members, parties who had signed the Membership Form were present, along with two other persons. If the membership forms conferred membership voting rights on the signatories, there was a quorum at the February 2008 meeting. As previously noted, Pagan does not discuss, much less disavow, the existence or import of the membership forms, but merely states that the members who put Rev. Ramirez's election over the top at the February 2008 meeting were not members of the church, but members of HOGUPC. Because there is a question as to the validity of the November 2007 meeting, there is a factual question as to whether the membership forms voted upon at the November 2007 meeting conferred membership voting

status on the HOGUPC signatories. Again, this is not an issue requiring theological debate, but merely a question as to whether a vote was properly taken at a proper meeting in November 2007. Thus, there is a question of fact which this court cannot now decide.

B. RCL § 2-b (1) and the February 2008 Meeting

The church further argues that the three proxy votes at the February 2008 meeting were improper under section 2-b (1) © of the RCL. Section 2-b (1) is concerned with the applicability of the Not-For-Profit Corporation Law (NPCL) to corporations within the RCL. Section 2-b (1) ©, as relevant, provides that section 609 of the NFPL shall not apply to religious corporations.

Section 609 of the NFPL addresses the issue of proxies. Section 609 (a) provides that “[e]xcept as otherwise provided in the certificate of incorporation or the by-laws: (1) Every member entitled to vote at a meeting of members ... may authorize another person or persons to act for him by proxy.” In accord with the interplay between these statutes, the church argues that vote by proxy was not available to effect the vote at the February 2008 meeting.

Resolution of this matter requires only the application of neutral principles of law. If the November 2007 meeting was validly brought, and the by-laws containing a proxy provision validly adopted, voting by proxy was a valid exercise of the by-laws. This is a factual matter the court cannot address.

iv. RCL §§ 5 and 25, and the February 2008 Meeting

The church next urges that Article Three, section 15 of the by-laws prepared by Manners, and allegedly approved at the February 2008 meeting, violates RCL § 5 and 25, which sections address the duties and powers of trustees of a religious corporation, and the situation of pastors, respectively.

Section 5 of the RCL, which addresses the duties of trustees in a religious corporation, concludes that “this section does not give to the trustees of an incorporated church, any control over the calling, settlement, dismissal or removal of its minister” Section 25 provides that “[n]o provision of this chapter authorizes the calling, settlement, dismissal or removal of a minister,” except as according to the “laws and regulations, practice, discipline, rules and usages of the religious denomination or ecclesiastical governing body, if any”

The church charges that the by-laws voted upon at the February 2008 meeting give the trustees the power to remove a pastor before allowing the congregation to vote on this matter, and so, violate the above two sections of the RCL. The matter is needlessly complicated by the fact that neither party has provided the page of the by-laws containing the language in question (page five being missing from both the church’s and the defendants’ papers). *See* Notice of Mot., Ex. 16; Mem. in Opp. to Mot., Ex. C.

Section 25 of the RCL does not say that a pastor cannot be appointed by a proper vote by voting members of a church, or that a church cannot make alternative rules concerning how to vote for a pastor, or that a court cannot determine whether that vote was proper under

the church's own by-laws. Whether Rev. Ramirez's vote into office was proper involves, as set forth above, questions of fact.

B. Dispute Resolution Clause

The by-laws allegedly voted as binding by the church contain a dispute resolution clause. The clause calls initially for disputes "among Christians" to be mediated by either the church, according to its own rules, or "through the use of a nationally recognized Christian-based mediation service." By-Laws, at 7. Failing mediation, arbitration is to be held before the American Arbitration Association.

The validity of the clause depends on the validity of the by-laws themselves, so, it can hardly be used to determine the validity of those by-laws.

In any event, the defendants have waived their right to rely on an arbitration clause, having actively participated in this action for over one year, including answering the complaint, and participating in discovery and depositions. A Note of Issue has been filed. *See Accessory Corp. v Capco Wai Shing, LLC*, 39 AD3d 344, 345 (1st Dept 2007)(defendants' participation in discovery in an action "constituted an affirmative acceptance of the judicial forum, with a concomitant waiver of any right to arbitration"). This matter is properly before this court.

C. Fraud and Negligent Misrepresentation

Fraud requires a showing of a representation of "a material existing fact, falsity, *scienter*, deception and injury [internal quotation marks and citation omitted]." *New York*

University v Continental Insurance Company, 87 NY2d 308, 318 (1995); *see also Serino v Lipper*, 47 AD3d 70 (1st Dept 2007). Each of these elements must be pled with particularity. CPLR 3016 (b); *Papp v Debbane*, 16 AD3d 128 (1st Dept 2005); *LaSalle National Bank v Ernst & Young LLP*, 285 AD2d 101 (1st Dept 2001).

A claim for negligent misrepresentation must state “(1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information.” *J.A.O. Acquisition Corp. v Stavitsky*, 8 NY3d 144, 148 (2007); *see also Parrott v Coopers & Lybrand, L.L.P.*, 95 NY2d 479 (2000). The church’s claim for negligent misrepresentation is apparently based on its belief that Manners was acting as the church’s attorney, in the preparation of the by-laws and the installation of Rev. Ramirez.

The church’s causes of action for fraud and negligent misrepresentation allege that defendants, in calling for the appointment of Rev. Ramirez as pastor of the church, and presenting the church with the new by-laws, represented to the church and Pagan that defendants were their allies, when, in fact, defendants never intended to help the church at all, always intending to grasp control of the church, and the building, for their own purposes.

The church has pled a claim for fraud, based on the alleged representations of defendants that the by-laws and the installation of Rev. Ramirez would benefit the church, when those representations were not true. Negligent misrepresentation has been pled based on the allegations that Manners acted as the church’s attorney in initially providing the

proposed by-laws. Although he was not retained by the church as attorney, and Pagan apparently had counsel with regard to her review of the proposed by-laws, Manners did present the church with a bill showing the time which he had spent on church matters. Manners never, however, sought to collect on the bill. Questions of fact preclude dismissal of these causes of action.

III. Conclusion

The resolution of this matter involves only neutral principles of law as set forth in the RCL. Whether or not the November 2007 meeting was properly brought, and whether it resulted in a new pastor, new by-laws and new members, are factual questions based on the RCL, which must be resolved before the propriety of the February 2008 meeting, and its results, can be determined.

Accordingly, it is

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

ORDERED that the cross motion for summary judgment is denied.

This constitutes the decision and order of the Court.

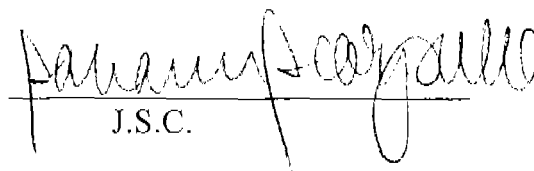
FILED

Dated: New York, New York
June 1, 2011

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