

Paracha v Adulaleem
2011 NY Slip Op 33310(U)
July 14, 2011
Supreme Court, Queens County
Docket Number: 29710/2010
Judge: Allan B. Weiss
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Allan B .Weiss IA Part 2
Justice

ZIA ULLAH PARACHA a/k/a HAFIZ ZIA x
ULLAH PARPCHA. SHAHIDA PARACHA
ISLAMIC CENTER OF CORONA, INC., ABDUL
SALAM AKRAMI, AHMED EJAZ KHAWAJA,
MOHAMMAD AKIF SALEEM, SYED IQBAL,
SYED SALAHUDDIN, SAJID SOHAIL, MEHDI
ZAFAR, GULMAN MUSTAFA CHOUDHURY,
MOHAMMAD M. CHAUDHRI,
and "JOHN and/or JANE DOES"
similarly situated,

Index
Number 29710 2010

Motion
Date June 8, 2011

Motion
Cal. Number 19

Motion Seq. No. 2

Plaintiffs,

-against-

LUQMAN ADULALEEM , MOHAMMAD
YAQUB BUTT, OMER SALIK, SABIR
KAPADIA, AURANGZEB KHAN, ABBAS
PATEL, ABDUL GHANI, SAIFUR RAHMAN,
ALAMIN, JALALUDDIN KHAN, DIN
MOHAMMAD MALIK, MASJID ALFALAH
OF CORONA, INC.,

Defendants.

x

The following papers numbered 1 to 6 read on this cross motion by the defendants for, inter alia, an order pursuant to CPLR 3211(a)(2) dismissing this action for lack of subject matter jurisdiction

	Papers <u>Numbered</u>
Notice of Cross Motion - Affidavits - Exhibits	1
Answering Affidavits - Exhibits	2-3
Reply Affidavits	4
Memoranda of Law	5-6

Upon the foregoing papers it is ordered that the motion is disposed of as follows:

Three individuals incorporated the Islamic Center of Corona, Inc. (ICC-1) in 1976 pursuant to Article 10 of the New York State Religious Corporations Law. Certificates of incorporation for religious corporations are filed with the Clerk of the County where the house of worship or principal office is located, and, if there is none, then with the Secretary of State. (*See*, Religious Corporations Law § 3, “Filing and recording certificates of incorporation of religious corporations.”) Upon incorporation, certificates for ICC-1 and Masjid Alfalah, Inc. were filed with the Clerk of the County of Queens. ICC-1 holds property which it received by two deeds, the first from Dorothy Cirigliano, among others, dated April 15, 1976 and the second, from Mahboob Alam, dated May 27, 2007. The first deed identifies the grantee as “Islamic Center of Corona, Inc., a domestic religious corporation ***,” and the second deed identifies the grantee as “ Islamic Center of Corona, Inc.,” a religious corporation ***.” ICC-1 owns real property located at 101-03 43rd Avenue, Corona, New York where its employees reside.

In 2010, other members of the mosque formed a corporation which they also named the Islamic Center of Corona, Inc. (ICC-2). Michael B. Doyle, Esq., the attorney for the plaintiffs, had noticed the name “ Islamic Center of Corona, Inc.” on the deed for property upon which the mosque and related buildings are located. Doyle checked with the Secretary of State to see if the Islamic Center of Corona, Inc. had been incorporated, and he failed to check with the County Clerk. Since there was no record of a corporation known as “Islamic Center of Corona, Inc.” on file with the Secretary of State, Doyle used the name to incorporate ICC-2. Despite failing to check the County Clerk’s office for ICC-1, Doyle or his agent filed the certificate of incorporation for ICC-2 with the County Clerk.

There are two factions struggling for control of the mosque, and this struggle has resulted in the filing of two actions in New York State Supreme Court, County of Queens, *Masjid Alfalah of Corona, Inc. v. Paracha*, Index No. 24549/10 (Action 1) and *Paracha v. Adulaleem*, Index No. 29710-10 (Action. 2) and the filing of one landlord-tenant

proceeding in Civil Court, County of Queens, *Islamic Center of Corona, Inc. v. Ullah* , LT Index No. 50916/11.

The Masjid Alfalah of Corona, Inc. (MAC), alleging that it was formerly known as the Islamic Center of Corona, Inc. and that it owns a mosque located at 42-12 National Street, Corona, New York, brought Action 1 against Zia Ullah Paracha. In 1982, MAC allegedly hired Paracha as a minister (Imam), but in July 2010 MAC allegedly terminated his employment in a legal manner because of allegedly abusive behavior toward those who went to pray at the mosque. Paracha allegedly refused to end his appearances at the mosque, and he and his faction have allegedly disrupted the affairs of the mosque. MAC began Action 1 for the purpose of, inter alia, obtaining a preliminary injunction against Paracha prohibiting him from leading prayer services and engaging in disruptive behavior.

On or about November 29, 2010, Paracha and his supporters brought the instant action, Action 2 , against trustees and officers of the mosque, alleging, inter alia, that the trustees improperly attempted to terminate the Imam's employment and improperly refused to hold a valid election for the Board of Trustees. The plaintiffs in Action 2 alleged that on September 22, 2010, they held a valid election for the Board of Trustees which resulted in the replacement of the defendants, but the defendants have refused to relinquish their control of the affairs of the mosque. The plaintiffs in Action 2 sought, inter alia, a judgment declaring that the defendants are no longer officers or directors of the mosque and that the former directors did not legally terminate Paracha's employment. The plaintiffs also sought an accounting of the income of the mosque.

In or about January, 2011, MAC and its "management council" brought a Landlord-Tenant proceeding against Paracha, among others, seeking a judgment evicting them from an apartment in a building located at 101-03 43rd Avenue, Corona, New York, and an adjacent parking lot located at 101-05 43rd Avenue, Corona, New York. The petition alleged that the Islamic Center of Corona, Inc., MAC's alter ego, owned the subject premises and that the respondents were the occupants of the subject premises. The petition alleges that MAC hired Paracha to be the Imam of the mosque located near the subject premises and that the occupants of the subject premises are there because of his employment. By notice dated July 20, 2010, MAC terminated Paracha's employment at the mosque and allegedly thereby terminated his right to occupy the subject premises.

Pursuant to a decision and order (one paper) dated April 11, 2011 rendered in Action 1, the Honorable Denis J. Butler denied MAC's motion for a preliminary injunction prohibiting Paracha from acting as Imam and granted Paracha's CPLR 3211(a) (7) motion for an order dismissing Action 1. Judge Butler found, inter alia, that the bylaws dated "Oct 1993," relied upon by MAC for its authority to terminate Paracha's employment, were not

“shown to be the By-Laws ‘adopted right after the incorporation of the Masjid Alfalah’ as alleged by plaintiff’s counsel.” Judge Butler further found that MAC did not establish its standing to bring Action 1 since the plaintiff conceded that ICC-1 still exists and had title to the mosque’s property.

Pursuant to a memorandum dated May 31, 2011, this court ordered the consolidation of Action 2 with the landlord-tenant proceeding. On June 8, 2011, the plaintiffs withdrew their instant order to show cause seeking essentially the same relief. Only the defendants’ CPLR 3211 cross motion remains for disposition.

That branch of the cross motion which is for an order pursuant to CPLR 3211(a)(2) dismissing the complaint for lack of subject matter jurisdiction is denied. The defendants argue that “control of the Mosque by the trustees, the selection of trustees and members, the hiring and firing of employees, and the right to vote are matters squarely controlled by the custom, discipline, rules, usages, and regulations of Tablighi Jamaat Muslim sect.” Defendant Saif-Ur-Rehman, allegedly one of the trustees of ICC-1 since its inception, swears that “The management of ICC-1 can only properly be carried out by senior male members of our sect, in strict accordance with the dictates of Tablighi Jamaat.” The defendants have submitted a fatwa (a religious opinion) from Mufti Abdullah Nana concluding that “ Islamic traditions do not support the concept of mandated elections for masjid committees or other positions of leadership.” The Mufti further states: “It is the prerogative and decision of the committee to hold public elections if they deem necessary.” On the other hand, the plaintiffs deny that most mosque members belong to the Tablighi Jamaat sect, and the plaintiffs allege that, in any event, ICC-1 did not have by-laws at the relevant time, thereby subjecting itself to the provisions of the Religious Corporation Law regarding the governance of the mosque. (*See, Rosen v. Lebewohl*, 28 Misc3d 1226[A] [Table], 2010 WL 3326868 [Text]. [nor].)

It is true that the competence of this court does not include the determination of religious disputes. (*See, Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. v Congregation Yetev Lev*, 31 AD3d 480, affd 9 NY3d 297.) The judicial determination of religious disputes violates the First Amendment because it establishes one religious belief as correct for the membership and interferes with the free exercise of an opposing faction's beliefs. (*See, Lightman v Flaum*, 97 NY2d 128; *First Presbyterian Church of Schenectady v United Presbyterian Church in U.S.*, 62 NY2d 110.) "The First Amendment prohibits a civil court from conducting an inquiry into religious law, beliefs, or internal hierarchy ... resolving disputes over a religious group's membership requirements ... or inquiring into religious disputes" (*Congregation Yetev Lev D'Satmar, Inc. v Kahana*, 31 AD3d 541, 542, affd 9 NY3d 282; *see, First Presbyterian Church of Schenectady v United Presbyterian*

Church in U.S., supra; Kelley v Garuda, 36 AD3d 593; *Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. v Congregation Yetev Lev, supra.*)

However, in the case at bar, the plaintiffs' complaint essentially concerns which of two rival Boards of Trustees has the legal right to control the affairs of the mosque. The plaintiffs contend that the original board of ICC-1 has retained control of the mosque in violation of the provisions of Article 10 of the Religious Corporation Law. The complaint does not raise issues pertaining to "religious doctrine and practice," and it is those issues which the United States Constitution prohibits the court from resolving. (*Kelley v Garuda, supra*, 595, quoting *Presbyterian Church v Hull Church*, 393 US 440, 449.) The complaint raises issues which can be decided by the application of neutral principles of law without violating the First Amendment. (See, *First Presbyterian Church of Schenectady v United Presbyterian Church in U.S., supra; Kelley v Garuda, supra.*) The court notes *Venigalla v. Nori* (11 NY3d 55,62), a proceeding that had been commenced to remove members of the board of trustees of a religious society, which states: "An important difference between the two articles is that, while the trustees of article 10 corporations are elected by the body's members (see Religious Corporations Law §§ 191, 192, 194, 195, 199), article 9 corporations have self-perpetuating boards." The defendants admit that ICC-1 was incorporated pursuant to Article 10 of the Religious Corporation Law (see Rehman affidavit), and it may only be necessary to resort to the provisions of that statute to resolve the dispute between the factions.

That branch of the cross motion which is for an order pursuant to CPLR 3211(a)(3) dismissing the complaint on the grounds that the plaintiffs lack the legal capacity and standing to maintain this action is denied. While ICC-2 may have been mistakenly incorporated, nevertheless, the individual plaintiffs have both the legal capacity and standing to sue, not as members of ICC-2, but as members of the mosque. As for the plaintiffs' capacity to maintain this action, capacity "is a threshold question involving the authority of a litigant to present a grievance for judicial review." (*Matter of Town of Riverhead v New York State Bd. of Real Prop. Servs.*, 5 NY3d 36, 41.) In the case at bar, the plaintiffs clearly have the authority to present their own claims regarding their rights as members of the mosque. As for standing, "[s]tanding to sue requires an interest in the claim at issue in the lawsuit that the law will recognize as a sufficient predicate for determining the issue at the litigant's request ..." (*Caprer v Nussbaum*, 36 AD3d 176, 182.) The plaintiffs have a sufficient interest in the governance of the mosque to maintain this action. (See, *Islamic Center of Harrison, Inc. v. Islamic Science Foundation, Inc.*, 262 AD2d 362 [the individual plaintiffs were members of the Islamic Cultural Center of New York under Religious Corporations Law § 195 and as such had standing to bring the action].)

That branch of the cross motion which is for an order pursuant to CPLR 3211(a)(10) dismissing the complaint for failure to join an indispensable party is denied. The plaintiffs have successfully moved for an order permitting the service of an amended complaint joining ICC-1 as a defendant in this action.

Dated: July 14, 2011

J.S.C.