

**Anderson v Union Baptist Church**

2014 NY Slip Op 32692(U)

October 15, 2014

Supreme Court, New York County

Docket Number: 150090/2013

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
PRESENT: Hon. EILEEN A. RAKOWER  
Justice

PART 15

ANTONIO D. ANDERSON,

Plaintiff,

INDEX NO. 150090/2013

- v -

MOTION DATE

UNION BAPTIST CHURCH, CHARLES COOK AND  
PAMELA WRIGHT,

MOTION SEQ. NO. 4

Defendants.

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1-3

Answer — Affidavits — Exhibits \_\_\_\_\_

4

Replying Affidavits \_\_\_\_\_

**Cross-Motion:            Yes                    X    No**

This is an action for breach of an employment agreement (“Agreement”). Plaintiff, Antonio Anderson (“Anderson”), who had been employed as a pastor for defendant, Union Baptist Church (“Union Baptist”) claims that Union Baptist breached the parties’ agreement by holding a vote to dismiss Anderson that was not in accordance with the By-Laws and by conditioning Anderson’s final three months pay upon certain the enumerated conditions. The action was previously dismissed as against Charles Cook and Pamela Wright, officers of Union Baptist.

Anderson now moves for summary judgment against Union Baptist Church. Union Baptist opposes. Anderson submits the attorney affirmation of Jonathan C. Pollard, as well as his own affidavit.<sup>1</sup> Annexed to Pollard’s affirmation are copies of the pleadings, an agreement dated December 16, 2007 entered between

<sup>1</sup> By Order dated June 17, 2014, the Court denied Union Baptist’s motion to strike the Note of Issue and granted Union Baptist’s motion to the extent that it directed Anderson to produce an authorization for Dr. Richardson’s counseling records within 30 days.

Anderson and Union Baptist, a copy of Union Baptist's Amended Constitution and By-laws ("ACBL"), a letter dated November 20, 2012 sent by Charles Cook, Pamela Wright, and Yvonne Melton Gyesi to the members of Union Baptist notifying them that a vote was to be held on December 1, 2012 on whether Anderson should continue to be employed as a Pastor of the Church, and a letter from Cook to Anderson dated December 4, 2012 notifying Anderson that as a result of a Special Called Church Meeting, Anderson was released from all responsibilities and duties as Pastor. Plaintiff also submits Cook's deposition testimony.

In opposition, Union Baptist submits the attorney affirmation of Hugh C. Campbell and the affidavit of Charles Cook, the Chairman of the Deacons' Ministry at Union Baptist.

The parties entered into an agreement on December 16, 2007, wherein Anderson accepted the position of pastor of Union Baptist Church. The agreement provides, in pertinent part:

The items listed above are itemized in the Pastoring and Preaching Section of our Annual Review adopted by the church body annually. They are all subject to review as your performance in ministry areas will be subject to annual review as well.

Our expectations from you as pastor are itemized in our proposed Amended Constitution and By-laws under Article V: Duties and Responsibilities of the Pastor.

The Agreement set forth, among other, the relevant provisions:

Section 19: The Pastor of the Church shall serve for an indefinite period and shall hold office as long as his/her Christian conduct, ability to provide positive and meaningful growth among the congregation, and physical strength permit him/her to discharge his/her duties.

Section 20: The relationship of the Pastor and the church may be severed by either party giving the other three (3) months written notice. A two-thirds majority vote of members of the church who are present at a meeting called for the purpose of dismissing a Pastor shall be required to issue a Notice of Dismissal. After said affirmative vote, the Deacons shall issue a Notice of Dismissal.

Section 21: The church shall compensate the Pastor according its ability and the negotiated benefit package which includes provision for housing. Such compensation shall be in accordance with the Pastor's scope of responsibility, experience and education. There shall be an annual review of Pastor's total compensation package.

The Agreement further stated, "Other items that relate to the pastor are found in Article IV: Sections 5, 6, 7, 8, and 9."

Anderson avers that this Agreement incorporated all of the terms of the Defendant's Amended Constitution and By-Laws ("ACBL"), including Article XVII, Section 5 of ACBL, which provides, "A special or called Church meeting may be called by the Pastor or Deacons Ministry upon giving two weeks' notice by mail *or* said meeting having been announced from the pulpit on two consecutive Sundays prior to the proposed Special Meeting." (emphasis added).

Anderson claims that Union Baptist breached the parties' Agreement when it called a special church meeting to vote on whether Anderson should remain employed as Pastor without providing the requisite two weeks' notice or announcing the special church meeting from the pulpit for two consecutive weeks prior to the December 1, 2012 Special Meeting, by failing to provide him with the requisite three months' notice of dismissal after a properly held vote, and by conditioning his final three months' pay on his signing a release forfeiting his right to sue, vacatur or the church parsonage, and turning over of the church's keys.

Cook avers, "[D]uring the course of his employment with Union Baptist Church, Rev. Anderson engaged in a pattern of behavior detrimental to the church, which led Union Baptist Church to come to the determination that a meeting with Rev. Anderson to discuss his performance was necessary. Some of the behavior included, but were not limited to: Rev. Anderson's lack of Pastoral support to grieving parishioners; his failure to establish set office hours to meet with members of the church; his lack of a frequent and regular presence in the Church during the week days; his use of profane language to members of the Deacon and Trustee Boards and to Rev. Anderson physically lunging at trustees." Cook avers that Anderson breached his duties as a Pastor by refusing to meet to discuss his performance and tenure as Pastor and abandoning the pulpit during the service on October 28, 2012.

As for the circumstance surrounding Anderson's termination and specifically, the notices provided in connection with the December 1, 2012 special meeting, Cook further states:

That on Wednesday, October 24, 2012, a letter was sent to members of Union Baptist Church, advising them that a "Called Meeting" was to take place on Saturday, November 10, 2012, at 10 am to discuss the tenure and performance of Rev. Anderson. That at the November 10, 2012 "Called Meeting" the Church membership voted to hold another Called Meeting on December 1, 2012, for the specific purpose of voting on the dismissal of Rev. Anderson. That on November 11, 18 and 25, 2012, during regular Church services, the Church Clerk read a Notice to the Congregation that there will be a "Called Meeting" held at the Church on December 1, 2012 at 10 am, for the purpose of voting on the dismissal of Rev. Anderson. That I was personally present at the time the above mentioned Notices were read by someone designated by the Church Clerk. Although the Notices were not read separately from the pulpit, they were read along with the other Church notices during regular Church services. That in addition to the notices being read to the Church body during regular services, a letter was also sent to the membership on November 20, 2012 reminding them of the "Called Meeting" scheduled for December 1, 2012.

Thus, while Anderson avers that notice of the December 1, 2012 special meeting was inadequate, Cook avers that proper notice was provided.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]).

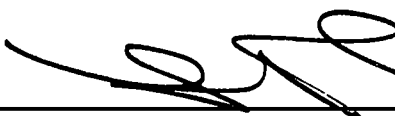
Anderson has failed to make a prima facie showing of entitlement to summary judgment as matter of law. Defendant has raised an issue of fact in an affidavit which squarely contradicts the averments of Rev. Anderson.

Wherefore, it is hereby

ORDERED that Plaintiff Antonio D. Anderson's motion for summary judgment is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: OCTOBER 15, 2014



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HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION    X NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST     REFERENCE