

**Matter of Community Gospel Truth Church of God,  
Inc.**

2015 NY Slip Op 30394(U)

February 26, 2015

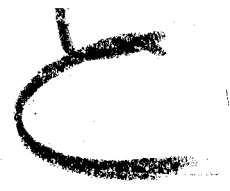
Sup Ct, Bronx County

Docket Number: 260087/2014

Judge: Sharon A.M. Aarons

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX Part 24**

In the Matter of the Application of the  
COMMUNITY GOSPEL TRUTH CHURCH OF GOD, INC.,  
Petitioner,

**Index No. 260087/2014**  
Present: Hon. Sharon A. M. Aarons

pursuant to Section 18 of the New York State Religious  
Corporations Law, for leave to convey real property  
located at 3427 White Plains Road, Bronx, New York,  
a parcel of improved land, and thereafter to dissolve.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of motions as indicated  
below:

<b>Papers</b>	<b>Numbered</b>
<b>Order to Show Cause and Petition</b>	<b>1, 2</b>
<b>Answering Affidavits</b>	<b>3</b>
<b>Reply</b>	<b>4, 5</b>

<b>Papers</b>	<b>Numbered</b>
<b>Notice of motion and Affidavits Annexed</b>	<b>1</b>
<b>Answering Affidavits</b>	<b>2, 3</b>
<b>Reply</b>	<b>4</b>

The foregoing motions are consolidated for disposition and decided as follows:

By Order to Show Cause, the petitioner COMMUNITY GOSPEL TRUTH CHURCH OF GOD,  
INC. (Gospel Truth Church) seeks leave pursuant to Religious Corporations Law (RLC) § 18 to convey real  
property located in Bronx County, and to dissolve. Respondents Hyacinth Seabrook, Joseph Seabrook and  
Eunice Trail (respondents) submit written opposition. By separate motion, respondents move for summary  
judgment dismissing the petition. The petitioner submits written opposition. The motions are consolidated  
for disposition and decided as follows:

In support of the petition, the petitioner Gospel Truth Church submits the Certificate of Incorporation of Gospel Truth Church dated May 31, 1973, pursuant to RLC art. 8, signed by Elisha A. Duncan, Chairman, which recited that the church shall have nine trustees, and which list three trustees – Lloyd Thomas, Annie A. Duncan, and Daniel Rutherford, to hold office until the first annual election on March 18, 1974; the petitioner’s By-Laws; documents from the State of Florida indicating that an entity known as Community Gospel Truth Church of God, Inc., was incorporated in that State on February 2, 1996; a contract of sale dated October 18, 2013, with petitioner as seller and Evon Carrion<sup>1</sup> as purchaser, for premises located at 3427 White Plains Road in Bronx County, in the amount of \$425,000; a real estate appraisal valuing the property at \$450,000; and a resolution of the petitioner dated December 23, 2013, reciting that Elisha Duncan, Annie Duncan, Jerry Lawrence, Maria Lawrence, and Harris McGillvery were elected as Trustees of Gospel Truth Church. The petition recites that the petitioner’s membership declined until only five trustees remained;<sup>2</sup> that the remaining trustees and members of Gospel Truth Church relocated to Florida, where they established a church under the same name as the petitioner (the Florida Church); and that the trustees desired to sell the Gospel Truth Church property, dissolve the church, and apply such funds as remained to the Florida Church.

In opposition, the respondents submit a joint affidavit executed by Hyacinth Seabrook, Joseph Seabrook and Eunice Trail; a copy of the Order to Show cause and annexed documents; an amendment to the Certificate of Incorporation of Gospel Truth Church dated January 4, 1983, executed by Annie Duncan, Carmen Thomas and Vera A. Johnson, indicating that the certificate was amended to provide that in the event of dissolution the proceeds be distributed to another tax-exempt organization; a handwritten, two-page document entitled “Meeting November 17, 2013” which recites that a meeting was held at Gospel Truth Church and that Hyacinth Seabrook, Dr. Larry Seabrook and Sylvan Service were elected as Trustees; and

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<sup>1</sup>The non-party purchaser has not appeared herein.

<sup>2</sup>The five trustees, all of whom joined in the petition, are Bishop Elisha Duncan; Annie Duncan; Jerry Lawrence; Maria Lawrence; and Harris McGillvery, all of whom reside in Palm Bay, Florida.

various documents filed with the Florida Secretary of State relating to that Palm Bay Community Gospel Truth Church of God, Inc. Respondents recite that the Trustees named in the petition are not in fact the duly-elected trustees of Gospel Truth Church, but that the respondents are the true trustees and member of the Gospel Truth Church. They allege that respondent Hyancith Seabrook is the daughter of Elisha Duncan and Annie Duncan; that Elisha Duncan and Annie Duncan “abandoned” the Gospel Truth Church , who have been “brainwashed by Jerry Lawrence to take the church” from its true owners. They further assert that Jerry Lawrence, Maria Lawrence and Harris McGillvery are not and were never members of the Gospel Truth Church.

In reply, the petitioners submit the affidavit of Elisha A. Duncan, who admits that respondent Hyacinth Seabrook is his daughter, and that respondent Joseph Seabrook is his son-in-law. Elisha Duncan also admits that Joseph and Hyacinth Seabrook were past Trustees and Members of the Gospel Truth Church, but have not held those offices for many years. He asserts that Joseph Seabrook was removed as pastor of the church for financial impropriety, and that while they have assumed unauthorized control of the building, the utility bills and mortgage have not been paid, requiring emergency loans to be secured. Elisha Duncan recites that under the By-Laws of the Church, he is the General Overseer and Chairman of the Governing Board, and that his position of Chairman is not subject to election; and further, that the Board of Trustees of the Church as elected in 1996 were Annie Duncan, Carmen Thomas (deceased), Lloyd Thomas, and Vera Johnson (deceased).

In support of the respondents’ motion for summary judgment, respondents submit a joint affidavit reciting essentially the same allegations, supported by the same documents, as noted above, and the petitioner submits the same affidavits and documents as were submitted in support of the petition.

The court’s function on this motion for summary judgment is issue finding rather than issue determination. (*Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395, 144 N.E.2d 387, 165 N.Y.S.2d 49 [1957]). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. (*Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223, 385 N.E.2d

1068, 413 N.Y.S.2d 141 [1978].) Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. (*Stone v. Goodson*, 8 N.Y.2d 8, 167 N.E.2d 328, 200 N.Y.S.2d 627 [1960]; *Sillman*, 3 N.Y.2d at 404).

The salient issue on the present motions is whether the named Trustees who voted in support of the present sale and dissolution, or the respondents, are the duly elected Trustees of the Gospel Truth Church. Religious Corporation Law § 5 states that only "[t]he trustees of a every religious corporation shall have the custody and control of all the temporalities and property, real and personal, belonging to the corporation and of the revenues therefrom." (*See Morris v Scribner*, 69 N.Y.2d 418, 508 N.E.2d 136, 515 N.Y.S.2d 424 [1987]). While Elisha Duncan, as the founding member Gospel Truth Church, has relocated to Florida, and formed another church, he did not cease being a Trustee by virtue of either the relocation or the formation of another church. Neither he, nor his wife Annie A. Duncan, have been shown to have "abandoned" the Church. Thus, Elisha Duncan remains a Trustee of the petitioner church, and the Court must then determine the identity of the remaining Trustees.

Successors to those trustees whose terms of office have expired "shall be elected by ballot from the qualified voters" at each annual corporate meeting (Religious Corporations Law § 164), notice of which is required to be publicly read at a regular meeting of the Church for public worship, on the two successive Sundays immediately preceding such meeting. (Religious Corporations Law § 163; *Trustees of Gallilee Pentecostal Church, Inc. v. Williams*, 65 A.D.3d 1221, 885 N.Y.S.2d 525 [2d Dept. 2009] [purported meeting was invalid, rendering "the election void"].) The only evidence as to the respondents' purported authority to act as Trustees is a two-page handwritten document by which the respondents purported to elect themselves as Trustees of the church. It has not been shown that the respondents, who were former Trustees, had any authority to call the meeting, or that they followed the requisite procedures for convening the November 13 meeting by providing the notice as described above.

For the same reasons, the authority of the Trustees voting in support of the sale and dissolution (other than Elisha Duncan, perhaps, who is exempt under the By-Laws from the necessity of being elected)

has not been established. While the petitioner has produced a Resolution of the petitioner dated December 23, 2013, reciting that Elisha Duncan, Annie Duncan, Jerry Lawrence, Maria Lawrence, and Harris McGillvery were elected as Trustees of Gospel Truth Church, it has not been shown who were the qualified voters, and that the appropriate notice was given. Article 8 of the Religious Corporations Law limits those persons qualified to vote at a corporate meeting to "all 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 by-laws thereof" (Religious Corporations Law § 164). (*See Trustees of Gallilee*, 65 A.D.3d at 1224).

A sale of the church property would appear to be in the best interests of the church, in view of its dwindling membership, and its precarious financial position. In addition, the sales price has been shown to be consistent with a qualified appraisal, and no countervailing evidence of actual price has been submitted.<sup>3</sup> Nevertheless, the Court can not approve a sale unless it has been shown that it has been authorized by the duly-elected Trustees of the petitioner.

The petition is denied without prejudice to renew consistent with the foregoing decision. The respondents' motion for summary judgment is granted to the extent of the foregoing. It is accordingly

**ORDERED** that the petition is dismissed without prejudice; and it is further

**ORDERED** that the Respondents shall serve a copy of the Order on the petitioner with Notice of Entry thereon.

Dated: February 26, 2015

  
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SHARON A. M. AARONS, J.S.C.

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<sup>3</sup>Unlike the statutorily-mandated role of the Attorney General in determining whether the sale or encumbrance of real property or the sale of substantially all of the assets by a religious corporation is in the best interests of the congregation (see RCL § 12; Not-For-Profit Corporation Law §§ 510-511), the Attorney General is not a statutory party to the dissolution of a religious corporation (see RCL § 18).