

<b>Rock Church, Inc. v Venigalla</b>
2015 NY Slip Op 30816(U)
May 14, 2015
Supreme Court, New York County
Docket Number: 151009/15
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 58

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ROCK CHURCH, INC., LORRAINE BASS,  
LESLIE REECE, ERIC RYBERG, NESTOR  
TORRES, Individually, as Trustees of  
the Board of Trustees of Rock Church  
and as Members of ROCK CHURCH INC.,

Petitioners,

Index No. 151009/15

-against-

RAJENDRA PRASAD VENIGALLA, PER-ARNE  
BRISTULF, JOSEPH MCGHEE, SUE CRUZ,  
MIRIAM LEE and EDUARDO ARVALAEZ,  
individually and as lawful and/or  
unlawful members of the Board of  
Trustees of Rock Church, Inc.,

Respondents.

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**Donna Mills, J.:**

This petition arises from a unfortunate dispute between two  
opposing factions of a small church, petitioner Rock Church, Inc.  
(Church), concerning, predominately, whether the pastor will be  
retained or fired. The issues involve the validity of a vote of  
the Church's members as to which persons are to compose the  
Board, and, so, have the right to determine the fate of the  
pastor. In the present proceeding, petitioners request a  
declaration, pursuant to New York Not-for-Profit Corporations Law  
§ 618, that the election of respondents to the Church's Board of  
Trustees (Board), at a special meeting of the membership held on  
October 5, 2014, was unlawful, and that the vote be rendered

void; for a declaration that petitioners Lorraine Bass (Bass), Eric Ryberg (Ryberg) and Nestor Torres (Torres) are lawfully elected members of the Board, pursuant to the October 5, 2014 meeting; for an order restraining respondents from conducting any Church business, and from terminating the employment of Pastor Daniel Impaglia (Pastor Impaglia), and Church secretary, Jeanne Besanty (Besanty); that the Church's books and records be turned over to them, as the lawful Board; that respondents be restrained from changing the Church's locks; and that respondent Rajendra Prasad Venigalla (Venigalla) step down from acting as a trustee. Petitioners alternatively request that the court supervise a new election. A temporary restraining order (TRO) is currently in effect, restraining respondents from "transferring assets of Rock Church or making any final determinations that will affect Rock Church, Inc. pending the hearing and determination" of this proceeding; enjoining them from removing Pastor Impaglia and Besanty; and enjoining them from changing the Church's locks.

Respondents cross-move to dismiss the petition.

### **I. Background**

The Church is incorporated under the Not-For-Profit Law, and is governed by the Board, whose members are pledged to follow the Church's By-Laws. The Church's congregation is made up of about 30 people. In 2014, Pastor Impaglia angered some Church members by his decision to change the number of Sunday services from two

to one. The Church split over this single issue.

Under the Church's By-Laws, the Board was to be made up of six trustees. Prior to October 2014, there were only four trustees, and the trusteeship of respondent Venigalla was in dispute. Upon application, this court ordered that a special meeting of the membership be held on October 5, 2014, to elect a full Board.

Respondent Per-Arne Bristulf (Bristulf) was, at that time, the Chairman of the Board. According to the petition, Pastor Impaglia presided over the meeting. As the Church's By-Laws require that the nominations for the position of trustee be made by the Chairman, Bass, Torrens and Ryberg submitted their names to Bristulf for consideration as trustees. However, Bristulf is alleged to have rejected their submissions. Instead, he placed the names of respondents Sue Cruz (Cruz), Miriam Lee (Lee) and Eduardo Arvalaes (Arvalaes) on the ballot. Venigalla's name was handwritten on to the ballot as well.

Apparently, a vote was taken in which all four of the nominated respondent candidates were rejected. At that time, petitioners believed that a new vote had to be taken, to meet the court's requirement that a board be chosen. Bass, Ryberg and Torres requested to be placed on the ballot for a new vote. Members were instructed to handwrite their names on to the ballot.

According to the petition, on the next vote, Bass, Ryberg and Torres were voted to the Board, resulting in a Board consisting of Reece, Bristulf, McGhee, Bass, Ryberg and Torres. Petitioners claim that the court-ordered meeting was then concluded by Pastor Impaglia.

Petitioners claim that Venigalla then "commandeered" the microphone, and called for a new vote in a "separate and additional meeting," even as members were leaving the Church. Petition, ¶ 54. According to the minutes of the meeting, as recorded by Venigalla, Venigalla "announced that anyone that was interested in staying for the real meeting should stay seated," over Pastor Impaglia's objections that the meeting, and the voting, were over. Minutes, Charrington affirmation in opposition to cross motion, exhibit A. Bristulf, as Chairman,<sup>1</sup> then proposed a new slate, consisting of Cruz, Lee, Arvalaez and Venigalla, even though these parties had already been defeated in the first vote.

Petitioners allege that Venigalla then held a "second, unsanctioned and illegal vote" which was made by "unlawful individuals, who were not Rock Church members." *Id.*, ¶ 58. That is, petitioners claim that the persons who voted were "mostly non-members" of the Church. *Id.*, ¶ 59. As a result,

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<sup>1</sup>Sometimes in the minutes Pastor Impaglia is denoted as "Chair."

petitioners maintain that respondents illegally took over the Board.

Petitioners claim "[t]hat the scheme and plan of this group is to disrupt the church, maintain power, control the assets of the Church and attempt to overthrow Pastor Impaglia, based on their personal biases against the pastor of Rock Church" (*id.*, ¶ 62), and that the majority of the Church's members oppose these persons and their actions, especially respondents' intention to remove Pastor Impaglia. Petitioners also complain of the firing of Besanty, who has been the Church's secretary for 10 years. Besanty is being removed, claim petitioners, so that respondents "can maintain unlawful control of the books, records, bank accounts, church property and church office." *Id.*, ¶ 72. Respondents claim that Besanty was fired for financial improprieties, and that it would be cheaper to replace her by part-time work.

The TRO is in effect to maintain the status quo until this matter is resolved. While Pastor Impaglia remains as the Church's pastor, pursuant to the TRO, respondents purport to have held a special meeting on January 25, 2015, where it was determined by vote to remove Pastor Impaglia.

Prior to the commencement of this proceeding, respondents commenced a separate action in Supreme Court, New York County, entitled *Rock Church, Inc. v Impaglia* (Index No. 651376/14),

seeking, among other things, damages for breach of contract, and for injunctive relief, against Pastor Impaglia and unnamed John Doe third parties. This first action is pending.

## II. Discussion

Not-For-Profit Law § 618 states that:

Upon the petition of any member aggrieved by an election and upon notice to the persons declared elected thereat, the corporation and such other persons as the court may direct, the supreme court at a special term . . . shall forthwith hear the proofs and allegations of the parties, and confirm the election, order a new election, or take such other action as justice may require.

The primary issue before the court is that of subject matter jurisdiction, and the applicability of the First Amendment of the United States Constitution. The First Amendment "prohibits the making of 'laws respecting an establishment of religion, or prohibiting the free exercise thereof.'" *First Presbyt. Church of Schenectady v United Presbyt. Church in U.S. of Am.*, 62 NY2d 110, 116 (1984), quoting US Const, 1st Amdt, 14th Amdt; *Cantwell v Connecticut*, 310 US 296 (1940); *Everson v Board Of Educ.*, 330 US 1 (1947). Pursuant to the First Amendment, "civil courts are forbidden from interfering in or determining religious disputes. Such rulings violate the First Amendment because they simultaneously establish one religious belief as correct for the organization while interfering with the free exercise of the opposing faction's beliefs." *First Presbyt. Church of Schenectady v United Presbyt. Church in U.S. of Am.*, 62 NY2d at

116. However, the *First Presbyt. Church of Schenectady v United Presbyt. Church in U.S. of Am.* Court recognized that a "neutral principles of law" analysis may apply to a court addressing issue arising within a religious institution, because courts are "free to decide," issues such as property disputes, "if they can do so without resolving underlying controversies over religious doctrine." *Id.* at 119, adopting reasoning in *Presbyterian Church v Hull Church*, 393 US 440 (1969). In short, "[t]he 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 inquiry into religious disputes [citations omitted]" *Matter of Congregation Yetev Lev D'Satmar, Inc. v Kahana*, 31 AD3d 541, 542 [2d Dept 2006]), but will address issues which will not cause the court to "become entangled" in a religious controversy. (*Matter of Congregation Yetev Lev D'Satmar, Inc. v Kahana*, 9 NY3d 282, 286 (2007)).

The first matter raised herein is whether respondents' slate of nominees were properly voted into office on the third vote taken on October 5, 2014, by a vote of Church members in good standing, or whether the votes of nonmembers were wrongfully considered in voting respondents' slate into office, thereby nullifying the election.

It has been recognized that only "a church has a right to

determine the qualifications of membership," and "whether one is a member 'in good standing is a matter of an ecclesiastical nature, relating to the government and discipline of the church . . . ." *Matter of Kissel v Russian Orthodox Greek Catholic Holy Trinity Church of Yonkers*, 103 AD2d 830, 831 (2d Dept 1984). If the present matter raised the issue of whether any particular person had the qualifications to be a member, this court could not address it, because to do so would be to attempt to "resolve[] underlying controversies over religious doctrine." *First Presbyt. Church of Schenectady v United Presbyt. Church in U.S. of Am.*, 62 NY2d at 119. Only the Church can decide who its members are.

Under the Church's By-Laws, membership in the Church is based on certain criteria of religious belief and action. Petition, exhibit E, By-Laws, § 2.1. Under the By-Laws, status of members of the Church "shall be made by the Pastor first." *Id.*, § 2.1 (b). The section goes on to say that "[t]he Pastor may at his discretion, and contingent upon the issue, consult with the Board in making his determination." *Id.* Pastor Impaglia has here vouched for the legitimacy of the petitioners as members, and of the other persons who voted for petitioners, but has claimed not to recognize or accept as members other parties who voted for respondents. Petitioners have provided the court with a petition showing support for Pastor Impaglia, by

persons he recognizes as members (Charrington affirmation in opposition to cross motion, exhibit B), claiming that "[t]he majority of members of the church do not agree with the actions of the Respondents or their attempt to terminate the Pastor of Rock Church." *Id.*, ¶ 21.

If this matter required the a weighing of an individual's fitness for membership in the Church, and a decision as to whether or not that individual met the criteria for membership, including investigation into the depth of his or her religious convictions, it would be clear that the matter would be beyond this court's subject matter jurisdiction. But, the matter actually turns on a matter of contract. In the present matter, through its by-laws, the Church's contract as to how the Church will conduct its business, the Church has already decided how members are to be determined. Under the Church's by-laws, it is up to the pastor, and only the pastor, to determine who is to be a member of the Church. That is, the matter was and is in Pastor Impaglia's hands, and only in his hands, presuming he acts with good faith, which has not (and under all the allegations made on these papers, cannot) been questioned. The matter is not, and cannot be, up to the Board, or to any respondent.

Since Pastor Impaglia shall, and has, determined who is a member of the Church, and Pastor Impaglia attests that the third vote taken on October 5, 2014, was taken largely among

nonmembers, who cannot vote for trustees, it follows that the final vote taken on October 5, 2014, which put respondents in power, was illegal under the Church's By-Laws, and is void. As said, the matter is one of pure contract interpretation, and therefore involves only the application by this court of a "neutral principle of law."

Respondents raise several other arguments as to the validity of the October 5, 2014 third vote, which are without merit. Respondents claim that this proceeding is duplicative of the first action, and also that it is barred by collateral estoppel, because of a stipulation entered on November 13, 2014 by the parties hereto which they claim bars this proceeding. Respondents claim that petitioners should be sanctioned for bringing a duplicative proceeding, even though petitioners did not bring the first action.

The first action is unrelated to this proceeding, being an action for damages for breach of contract, not a petition under Not-For-Profit Law § 618. There is no duplication. Collateral estoppel cannot apply to anything in the stipulation, because collateral estoppel only applies when there has been a final determination as to an issue, which is not the case here. See *Brown v Lutheran Medical Ctr.*, 107 AD3d 837, 838 (2d Dept 2013). There is nothing in the stipulation which bars this proceeding.

While respondents raise a weak argument that service was not

properly made on some respondents, affidavits of service on all respondents show that service was properly made.

Respondents argue that, under Not-For-Profit Law § 618, petitioners erred by failing to proceed against the Church. However, the argument here is, essentially, over who is the Church, and bringing the petition in the Church's name, rather than as a respondent, is, at most, a harmless error.

The court has considered respondents' remaining arguments on this issue, and finds them without merit.

Most unfortunately, the matter does not end here. This court must assess the validity of the second vote taken on October 5, 2014, which purportedly voted petitioners' slate into office. As previously noted, the By-Laws state that the Chairman of the Board must make the nominations to the Board. On the second vote, petitioners nominated themselves. This action violated the By-Laws, making the vote void.

The sad outcome of these events is that the court-ordered elections held on October 5, 2014 failed to result in the election of a Board. The parties must try again. This means that there must be another special meeting and another vote. The parties must act in utmost good faith to elect a Board which reflects the membership of the Church. That is, the Chairman of the Board must make nominations in good faith, and Pastor Impaglia must indicate who are valid Church members, and who are

not, also in good faith, in order to determine a vote by the majority of members. The parties must vote until there is a legal Board chosen. The court will not oversee the vote. The court urges the parties to think of the integrity of their Church, and to act in all ways in good faith.

### **III. Conclusion**

As a result of the foregoing, the court will declare that the second and third votes taken on October 5, 2014 were both improper and unlawful under the Church's By-Laws. The court will order a continuance of the TRO. The parties will be directed to conduct another special meeting, and conduct voting until a proper Board is put in place. Respondents' cross motion is granted, in that the petition is dismissed, without prejudice to a new petition should the new vote be contested.

According, it is

ADJUDGED and DECLARED that the purported election of respondents Sue Cruz, Miriam Lee, Eduardo Arvalaez and Rajendra Prasad Venigalla to the Board of Trustees of Rock Church, Inc., pursuant to the third vote taken on October 5, 2014, is unlawful and void, and Sue Cruz, Miriam Lee, Eduardo Arvalaez and Rajendra Prasad Venigalla are not members of the Board of Trustees of Rock Church, Inc.; and it is further

ADJUDGED and DECLARED that all actions taken by respondents as members of the Board of Trustees since October 5, 2014 are

annulled as void, including the vote on January 25, 2015 purporting to terminate Daniel Impaglia as pastor; and it is further

ADJUDGED and DECLARED that the purported election of petitioners Lorraine Bass, Eric Ryberg and Nestor Torres to the Board of Trustees, pursuant to the second vote taken on October 5, 2014, is unlawful and void, and Lorraine Bass, Eric Ryberg and Nestor Torres are not members of the Board of Trustees of Rock Church, Inc.; and it is further


ADJUDGED that the cross motion brought by respondents is granted, and the petition is dismissed without prejudice; and it is further

ORDERED that the temporary restraining order currently in place will remain in effect; and it is further

ORDERED that the parties are directed to hold a special meeting of the membership of Rock Church, Inc. on 6/21/15, to vote for a Board of Trustees.

DATED: 5/14/15

ENTER:



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J.S.C.

**DONNA M. MILLS, J.S.C.**