

**Cong. Machon Chana v Machon Chana Women's
Inst.**

2015 NY Slip Op 32885(U)

August 21, 2015

Supreme Court, Kings County

Docket Number: 503045/2015

Judge: Lawrence S. Knipel

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INDEX NO. 503045/2015

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At an IAS Term, Part Comm-4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of August, 2015.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X

CONG. MACHON CHANA, A RELIGIOUS CORPORATION,

Plaintiff,

- against -

MACHON CHANA WOMEN'S INSTITUTE, INC.
AND SARA LABKOWSKI,

Defendants.

-----X

The following e-filed papers read herein:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>2-13, 15-17 20-43, 45</u>
Opposing Affidavits (Affirmations) _____	<u>46-72</u>
Reply Affidavits (Affirmations) _____	<u>73-75</u>
Memoranda of Law _____	<u>14 44</u>
Plaintiff's Sur-Reply _____	<u>78-92</u>
Defendants' Supplemental Papers _____	<u>93-96</u>

Upon the foregoing papers, in this action by plaintiff, who purports to represent Cong. Machon Chana, a religious corporation, seeking a declaratory judgment and a permanent injunction against defendants Machon Chana Women's Institute, Inc. (Machon Chana Women's Institute) and Sara Labkowski (Labkowski) (collectively, defendants), plaintiff

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moves, by order to show cause, under motion sequence number one, for an order, pursuant to CPLR 6301, granting a preliminary injunction, enjoining and restraining defendants and their agents, servants, and employees, and all persons and entities acting by, through, or on their behalf from: (1) acting on behalf of, or taking any action in the name of Cong. Machon Chana, including, without limitation, filing or prosecuting any lawsuits on Cong. Machon Chana's behalf or entering into any agreements with any third parties on Cong. Machon Chana's behalf, (2) holding Labkowski out as being an officer and/or member of the board of trustees of Cong. Machon Chana, or having any authority whatsoever to take any action on Cong. Machon Chana's behalf, (3) continuing with the prosecution of a lawsuit filed by Labkowski in the name of Cong. Machon Chana, entitled *Cong. Machon Chana v Edison* (Civil Ct, Kings County, index No. 107488/2014), which is presently pending in the Housing Part of the Civil Court, Kings County, and (4) taking any action to interfere with the right of Cong. Machon Chana to use the real property owned by it, which is located at 1367 President Street, in Brooklyn, New York (the 1367 President Street property).

Defendants cross-move, under motion sequence number two, for an order: (1) pursuant to CPLR 6314, vacating the temporary restraining order, issued on March 18, 2015, contained in plaintiff's order to show cause, (2) pursuant to CPLR 6301, enjoining Rabbi Shoma L. Abramowitz, Rabbi Shea Hecht, Charlie Kupferman, Dr. Steve Rubel, Milton E. Kramer, Rabbi Shimon Hecht, Rabbi Levka Kaplan, Rebbetzin Baila Hecht, and Alex Berkowitz, and all those acting in concert with them from (a) holding themselves out as

and/or acting as directors/trustees, officers, or members of Cong. Machon Chana or Machon Chana Women's Institute, (b) unlawfully advertising any type of program by using the name of Congregation Machon Chana or Machon Chana Women's Institute or anything confusingly similar, and (c) claiming any right to use or occupy property owned by Congregation Machon Chana, including, without limitation, the 1367 President Street property, (3) pursuant to CPLR 3211 (a) (3), dismissing plaintiff's complaint on the ground that plaintiff lacks standing and legal capacity to maintain this action, (4) pursuant to CPLR 3211 (a) (1), dismissing plaintiff's complaint on the ground that a defense is founded on documentary evidence, namely, the duly filed certificate of incorporation of Cong. Machon Chana and the amendment of Cong. Machon Chana's certificate of incorporation, (5) pursuant to CPLR 3211 (a) (7), dismissing plaintiff's complaint on the ground that it fails to state a claim upon which relief may be granted, (6) pursuant to CPLR 3211 (a) (5), dismissing all causes of action on the ground that the applicable statute of limitations has expired, and (7) pursuant to 22 NYCRR 130-1.1, imposing costs and sanctions, including attorneys' fees, upon plaintiff for allegedly engaging in frivolous conduct as defined in 22 NYCRR 130-1.1 (c) (1), (2), and (3).

BACKGROUND

Cong. Machon Chana became incorporated as a religious corporation, organized under article 10 of the Religious Corporations Law, by a certificate of incorporation filed with the Kings County Clerk's Office on June 8, 1973. As set forth in affirmations by Rabbi Zalman

Labkowski (Rabbi Labkowski), Labkowski, Beth a/k/a Baila Bronstein Grinker (Bronstein), and Riva Teleshevsky (Teleshevsky), at the original meeting of incorporation, which was held on May 21, 1973, six qualified voters and members of the Congregation, namely, Rabbi Nathan Gurary, Bronstein, Labkowski, Teleshevsky, Sara Katzman and Rabbi Labkowski, were present. As reflected by the certificate of incorporation, at this incorporation meeting, these six qualified voters/members voted to have three trustees and elected Rabbi Nathan Gurary (Rabbi Gurary), Bronstein, and Rabbi Labkowski as the trustees of Cong. Machon Chana. Rabbi Labkowski, Labkowski, Bronstein, and Teleshevsky all assert that since the inception of Cong. Machon Chana, the only change in the composition of Cong. Machon Chana's trustees was in 2005, when Rabbi Gurary died, and his vacancy was filled by Teleshevsky.

Rabbi Labkowski and Bronstein attest that they have continuously served as trustees of Cong. Machon Chana, without interruption, since its formation, and Teleshevsky asserts that she has served as a trustee of Cong. Machon Chana continuously, and without interruption, from 2005 to the present date. Rabbi Labkowski, Bronstein, and Teleshevsky state that they have never resigned from being a trustee, and that there has never been, at any time, a meeting at which a new slate of trustees of Cong. Machon Chana was elected. Labkowski attests that she has held the office of president of Cong. Machon Chana since its formation in 1973, and Teleshevsky attests that she has held the office of secretary of Cong. Machon Chana since its formation in 1973.

By a Certificate of Amendment dated May 10, 1995, an amendment to Cong. Machon Chana's certificate of incorporation was filed with the Kings County Clerk's Office on May 17, 1995, following a meeting held on May 5, 1995, where it was resolved to file this amendment in order to bring the certificate of incorporation into compliance with certain requirements of the Internal Revenue Code. The amended certificate was executed by Labkowski, as Cong. Machon Chana's duly appointed and authorized president, and by Teleshevsky, as Cong. Machon Chana's secretary. Rabbi Labkowski, Labkowski, Bronstein, and Teleshevsky each attest that since the formation of Cong. Machon Chana in 1973, to date, pursuant to the duly filed certificate of incorporation and amendment to the certificate, Labkowski has acted as the president of Cong. Machon Chana, and that with the authorization from the board of trustees, Labkowski, as the president of Cong. Machon Chana, has handled and supervised all its operations, uninterrupted, for over 40 years, and that she continues to act in that capacity.

One of the purposes of Cong. Machon Chana listed on its certificate of incorporation was to own and maintain real property for its benefit and purposes. Its purposes also included holding and conducting classes in religious subjects. By a deed dated February 1, 1974, Cong. Machon Chana purchased the 1367 President Street property and it retains title to this property.

According to Labkowski (and as shown by stationary of Machon Chana Women's Institute from the 1970s), Machon Chana Women's Institute (which, like Cong. Machon

Chana, was named after Rebbetzin Chana Schneerson, the mother of the late Rabbi Menachem M. Schneerson, the Labavitcher Rebbe) had originally begun its operations in 1972 as an unincorporated entity at the urging of Rabbi Schneerson, for the purpose of conducting Jewish outreach and adult education classes to girls of post high school age. At that time, Machon Chana Women's Institute did not own any real property and used a building at 756 Eastern Parkway. After the 1367 President Street property was purchased, it was used as a dormitory for Jewish women while they engaged in Torah study at Machon Chana Women's Institute. Financial support came from outside charitable organizations, including National Committee for Furtherance of Jewish Education (NCFJE), which was headed by the late Rabbi Jacob J. Hecht. As stated in Machon Chana Women's Institute's bulletin, in 1974, Machon Chana Women's Institute's board of trustees consisted of Freda Korik, Rivka Chitrik, Sara Katzman, Leah Klein, Esther Sternberg, and Riva Teleshevsky.

Rabbi Schneerson had encouraged the trustees of Cong. Machon Chana to seek financial assistance from the late Rabbi Jacob Hecht of NYCFJE for the school and the 1367 President Street property. NCFJE is an organization that was founded in 1940 for the principal purpose of providing Jewish public school students with a free Jewish education, and, since then, its mission has expanded to include an array of programs to all sectors of the Jewish community. According to plaintiff, Cong. Machon Chana was run under the auspices of NCFJE. Contributions from NCFJE were applied toward part of the cost of running the building. After Rabbi Jacob Hecht's death in 1991, his sons, i.e., Rabbi Shea Hecht, Rabbi

Sholem Ber Hecht, and Rabbi Shimon Hecht, continued to support the school and the 1367 President Street property. Defendants claim that after several years of supporting the school and the 1367 President Street property, Rabbi Shea Hecht, Rabbi Sholem Ber Hecht, and Rabbi Shimon Hecht, in 1995, withdrew their financial support after a “rift” developed between them and Labkowski.

Thereafter, Machon Chana Women’s Institute filed a certificate of incorporation with the Kings County Clerk’s Office on February 22, 1996 under Not-For-Profit Corporation Law § 402. Its certificate of incorporation named seven persons on its initial board of directors, namely, Modechai Friedman, Motty Guary, Dr. Eli Rosen, Yosi Shpalter, Fischel Brownstein, Yaakow Reich, and Meir Horowitz. According to plaintiff, Machon Chana Women’s Institute was formed by Labkowski as a separate “breakaway entity” from NCFJE.

In a letter on Machon Chana Women’s Institute stationery, dated January 8, 1997, Labkowski informed members of the Crown Heights Community and Machon Chana Women’s Institute alumni that a “rift” had developed between the “Yissacher/Zevulun” parties of Cong. Machon Chana, referring to Labkowski and the others who ran the school, and NCFJE, as the school’s financial supporters. This letter stated that, at that time, there was no formal relationship between the Yeshiva and NCFJE. It further stated that the Yeshiva would still continue under the direction of Rabbi Shloma Majeski at 376 Crown Street and out of the dormitory at the 1367 President Street property. In an informational pamphlet that was published by Machon Chana Women’s Institute, it was stated that

“Machon Chana Women’s Institute was incorporated in 1996, independent of [NCFJE], who had served as its fiduciary arm from 1973-1995.”

On September 22, 1997, Rabbi Sholem Ber Hecht, claiming to be the vice-president/chairperson of the executive committee of Cong. Machon Chana, filed a petition in the Supreme Court, Kings County, seeking leave, without New York State Attorney General approval, to transfer the 1367 President Street property, for no consideration, to NCFJE, whose executive committee consists of him, Rabbi Shea Hecht, Rabbi Shimon, and Rabbi Shloma L. Abramowitz. The petition alleged that Rabbi Shimon Hecht, Rabbi Sholem Ber Hecht, Milton Kramer, Dr. Steven Rubel, Rabbi Meyer Gutnick, and Steven Mukamal, Esq. (the Hecht petitioners) made up the board of directors of Cong. Machon Chana, and that the transfer was authorized by them pursuant to a unanimous vote by them at a meeting held by them and a resolution passed by them on September 9, 1997 and signed by Steven Rubel, as Cong. Machon Chana’s purported secretary. Since, pursuant to article 12 of the Religious Corporations Law, approval of the Attorney General is required for such a transfer, the Hecht petitioners, in 1998, filed this petition with the Attorney General, seeking approval for this transfer.

Upon learning about the filing of the petition, Rabbi Labkowski, Rabbi Gurary, and Bronstein, as the trustees of Cong. Machon Chana, through the law firm of Fulbright & Jaworski, LLP, objected to this transfer in a letter to the Attorney General dated June 8, 1998, claiming that the Hecht petitioners were not the duly authorized trustees or officers of

Cong. Machon Chana, but had simply donated monies toward the running of the building at the 1367 President Street property. They submitted the certificate of incorporation and the amendment to the certificate, as proof that they were the only trustees of Cong. Machon Chana, and affirmations in which they each attested that none of the Hecht petitioners had ever been appointed as a trustee or duly authorized officer of Cong. Machon Chana.

In a letter to Rabbi Sholem Ber Hecht, Rabbi Shimon Hecht, Rabbi Shea Hecht, and NCFJE, dated June 8, 1998, Fulbright & Jaworski, on behalf Cong. Machon Chana and Zalman Labkowski, Rabbi Gurary and Bronstein, as its trustees, and Labkowski, as its president, stated that “[a]s you know, none of you have been appointed as trustees or officers of [Cong. Machon Chana] or [are] otherwise authorized to act on behalf of [it].” This letter demanded that they immediately withdraw their application to sell the 1367 President Street property to NCFJE and “immediately cease and desist from representing to anyone that [they we]re trustees or officers of [Cong. Machon Chana] or otherwise authorized to act on [its] behalf in any way.”

By a letter dated December 9, 1998, the Assistant Attorney General in Charge, on behalf of the Office of the Attorney General, advised the attorney for the Hecht petitioners that after reviewing the conflicting claims regarding who is duly authorized to act as the board of directors for Cong. Machon Chana, and following the submissions by both sides regarding proof of their authority to act on behalf of Cong. Machon Chana, his office had found that the submissions had failed to resolve the matter to its satisfaction, and that it was

unable to determine whether the petition was supported by a board resolution of “a duly authorized board” authorizing the transfer of the 1367 President Street property. He stated that for this reason, the Attorney General could not approve the proposed transfer of the 1367 President Street property, and that if the Hecht petitioners submitted the application for the transfer to NCFJE to the court, the Attorney General would file objections and request the court to hold a hearing as to the validity of the transaction. Thereafter, the Hecht petitioners took no further action.

It is undisputed that after 1997 up until August 2014, Machon Chana Women’s Institute ran its school, which operated out of 556 Crown Street, and provided religious education and instruction to Jewish women, and it used the 1367 President Street property for the purpose of providing housing to its students. However, according to Rabbi Shloma Majeski, who was the principal of the school since 1980, in August 2014, he and other faculty members were allegedly told by Labkowski that they were being discharged from the school and would need to be “rehired” under new terms and conditions. In an e-mail dated August 8, 2014, Labkowski informed Rabbi Majeski that “the school and the dormitory are now closing and will . . . reopen only when the necessary changes needed to build a viable and united mossad are implemented,” and to “[p]lease let [her] know by Sunday night if you are ready to meet on Monday to work on them.” Rabbi Majeski states that he was then contacted by Rabbi Shea Hecht and Rabbi Sholem Ber Hecht, who told him that they had learned that the school had been closed and that they were willing to take responsibility for

the school if he was willing to work with them. The faculty, staff, and students then allegedly agreed to work with the Hechts under the auspices of NCFJE.

At about the same time, Labkowski attempted to lock out certain students at the dormitory located at the 1367 President Street property, alleging that they were not legally occupying their rooms there. Cong. Machon Chana, by Labkowski, as its president, then commenced an eviction proceeding against Devorah Edison (the dormitory supervisor), Laila Bretz Tassano, Tatian Cretu, and Ahave Kaplan (who are students) in the Housing Part of the Civil Court, Kings County (the housing court eviction proceeding). The dormitory supervisor and these students, as petitioners, then commenced a Lockout Proceeding, under index number 105393/2014, against Labkowski, Rabbi Labkowski, and Rabbi Shea Hecht in the Housing Part of the Civil Court, Kings County. By a stipulation of settlement in the lock out proceeding, dated December 15, 2014, these petitioners were put back into possession, without prejudice to any eviction proceeding.

On March 17, 2015, plaintiff, claiming that the board of trustees of Cong. Machon Chana actually consists of Rabbi Shoma L. Abramowitz, Rabbi Shea Hecht, Charlie Kupferman, Dr. Steve Rubel, Milton E. Kramer, Rabbi Shimon Hecht, Rabbi Levka Kaplan, Rebbetzin Baila Hecht, and Alex Berkowitz (the nine Hecht trustees), filed this action and its instant order to show cause, which were supported by Rabbi Shimon Hecht's affidavit and exhibits. A temporary restraining order was granted, pending the hearing of this motion for a preliminary injunction, restraining defendants, their agents, servants, and employees and

all persons and entities acting by, through, or on their behalf, from continuing with the prosecution of the housing court eviction proceeding and it stayed that proceeding, pending further order of this court. On May 5, 2015, defendants filed their instant cross motion. Oral argument was held on June 4, 2015, after which additional supplemental papers were submitted by both plaintiff and defendants.¹

DISCUSSION

Articles 1 and 2 of the Religious Corporations Law are generally applicable to all groups incorporating under such law, and article 10 applies to corporations organized by those of the Jewish faith (*see* Religious Corporations Law § 190). Various provisions of the Not-For-Profit Corporation Law are also applicable because of their incorporation by reference (*see* Religious Corporations Law § 2-b [1])).

“The primary purpose of the Religious Corporations Law is to provide an orderly method for the administration of the property and temporalities dedicated to the use of religious groups, and to preserve them from exploitation by those who might divert them from the true beneficiaries of the corporate trust” (*Morris v Scribner*, 69 NY2d 418, 423 [1987], *rearg denied* [1987]). The “temporalities and property,” including the real property, of a religious corporation are required to be under the “custody and control” of a duly elected board of trustees, pursuant to Religious Corporations Law § 5 (*see Blaudziunas v Egan*, 18

¹The court, at oral argument, permitted plaintiff to serve a sur-reply, and defendants, in a supplemental affirmation, have addressed all of the arguments raised by plaintiff in its sur-reply.

NY3d 275, 281 [2011]; *Citizens for St. Patrick's v Saint Patrick's Church of W. Troy*, 117 AD3d 1213, 1215 [3d Dept 2014]).

Religious Corporations Law § 5, in pertinent part, provides:

“The trustees of 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, and shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject, and with the provisions of law relating thereto, for the support and maintenance of the corporation, or, providing the members of the corporation at a meeting thereof shall so authorize, of some religious, charitable, benevolent or educational object conducted by said corporation or in connection with it, or with the denomination, if any, with which it is connected; and they shall not use such property or revenues for any other purpose or divert the same from such uses.”

Pursuant to Religious Corporations Law § 2-b (1) (d), “[a]ny reference in the not-for-profit corporation law to the delivery of any certificate or other instrument to the department of state for filing refers to the filing or recording thereof in the office of the clerk of the county in which the corporation has its principal office or place of worship or otherwise as provided in this chapter.” Thus, the filing of Cong. Machon Chana's certificate of incorporation and amended certificate in the office of the Kings County Clerk is equivalent to and accorded the same official recognition as the filing of a not-for-profit corporation with the Department of State.

In addition, Religious Corporations Law § 193 provides:

“The presiding officer of such meeting and at least two other persons present and voting thereat, shall execute and acknowledge a certificate of incorporation, setting forth the matters so determined at such meeting, the trustees elected thereat and the terms of office for which they were respectively elected and the county, town, city or village in which its principal place of worship is or is intended to be located. On filing such certificate the members of such church and the persons qualified to vote at such meeting and who shall thereafter, from time to time, be qualified voters, at the corporate meetings thereof, shall be a corporation by the name stated in such certificate, and the persons therein stated to be elected trustees of such church shall be the trustees thereof, for the terms for which they were respectively so elected.”

Defendants contend that the certificate of incorporation is, therefore, prima facie evidence that Rabbi Labkowsky, Bronstein, and Teleshevsky are the sole trustees of Cong. Machon Chana, and that this evidence cannot be rebutted by plaintiff. They argue that based upon the certificate of incorporation and its amendment, and the affirmations by Labkowsky, Rabbi Labkowsky, Bronstein, and Teleshevsky, plaintiff's complaint must be dismissed on the grounds that plaintiff lacks standing and legal capacity to maintain this action because plaintiff does not represent the true trustees of Cong. Machon Chana, that the documentary evidence shows that only Rabbi Labkowsky, Bronstein, and Teleshevsky are Cong. Machon Chana's actual trustees, and that plaintiff has failed to state a cause of action.

In considering a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211 (a) (7), the complaint must be afforded a liberal construction (CPLR 3026), and the court must accept as true the facts alleged in the complaint, accord the plaintiff the benefit of every possible favorable inference, and only determine whether the facts, as

alleged, fit within any cognizable legal theory (*see Hurrell-Harring v State of New York*, 15 NY3d 8, 20 [2010]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Although evidentiary material may be considered in determining the viability of a complaint, the complaint should not be dismissed unless the defendant has established “that a material fact alleged by the plaintiff is not a fact at all and that no significant dispute exists regarding it” (*Stewart v New York City Tr. Auth.*, 50 AD3d 1013, 1014 [2d Dept 2008] [internal quotation marks and citations omitted]; *see also Lawrence v Graubard Miller*, 11 NY3d 588, 595 [2008]; *Nunez v Mohamed*, 104 AD3d 921, 922 [2d Dept 2013]). Similarly, a motion to dismiss pursuant to CPLR 3211 (a) (1) may be granted “only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Harris v Barbera*, 96 AD3d 904, 905 [2d Dept 2012]). To qualify as documentary evidence, evidence “must be unambiguous and of undisputed authenticity” (*Fontanetta v John Doe 1*, 73 AD3d 78, 86 [2d Dept 2010]; *see also Flushing Sav. Bank, FSB v Siunykalimi*, 94 AD3d 807, 808 [2d Dept 2012]).

Here, while defendants heavily rely upon Cong. Machon Chana’s certificate of incorporation to show that they are its sole trustees, the certificate of incorporation actually stated that Bronstein was elected trustee to hold office until the first annual meeting, that Gurary (who Teleshevsky replaced) was elected to hold office as trustee until the second annual meeting, and Rabbi Labkowski was elected to hold office as trustee until the third annual meeting. The certificate of incorporation further provided that the date for the annual

election of trustees was fixed for the first day of May each year. Defendants have not submitted any minutes of any meetings regarding any subsequent elections of trustees. Not-For-Profit Corporation Law requires that each corporation keep at its office complete records of board meetings. While, as noted above, Rabbi Labkowski and Bronstein each attest that they have always been the sole trustees of Cong. Machon Chana and Teleshevsky attests that she has served as a trustee of Cong. Machon Chana since 2005, this is not conclusive documentary evidence on this issue.

Where members of a religious corporation elect trustees at a meeting, they are the duly elected trustees (*see* Religious Corporations Law § 195; *Matter of Sillah v Tanvir*, 309 AD2d 674, 675 [1st Dept 2003], *lv dismissed* 3 NY3d 656 [2004]). Furthermore, Religious Corporations Law § 197 provides that “[a]n incorporated church to which this article is applicable, may, at an annual corporate meeting, change the number of its trustees.”

Here, in claiming to represent the board of trustees of Cong. Machon Chana, plaintiff has annexed, as exhibit D to its motion, notices of meetings by NCFJE addressed to NCFJE’s members, and rosters of nominated trustees and officers for NCFJE from 2005 through 2014. The most recent roster of nominated trustees and officers from NCFJE, pursuant to a vote held at a membership meeting on May 27, 2014 at NCFJE headquarters, lists the board of trustees of NCFJE, and states that five of its trustee board members, namely, Rabbi Shloma L. Abramowitz, Rabbi Shea Hecht, Milton E. Kramer, Charlie Kupferman, and Dr. Steve Rubel, serve on all other boards for NCFJE, and, under the heading “Machon Chana Board,”

lists Rabbi Shimon Hecht, Rabbi Levka Kaplan, Rebbetzin Baila Hecht and Mr. Alex Berkowitz.

Labkowski and Machon Chana Women's Institute point out that this exhibit reflects meetings by NCFJE, and not by Cong. Machon Chana. In addition, they note that the list of the non-NCFJE affiliated trustees are listed as trustees of Machon Chana, as opposed to Cong. Machon Chana. They assert that there is no actual evidence of any meeting by Cong. Machon Chana in which Cong. Machon Chana's members voted for a new board of trustees and changed the number of trustees from three trustees to nine trustees. Plaintiff, in response, contends that the names Machon Chana and Cong. Machon Chana were used interchangeably. They assert that NCFJE has, at all times, been the parent organization of Cong. Machon Chana, who is its affiliated organization. They contend, however, that at Labkowski's insistence, the NCFJE has had no formal relationship at all with Machon Chana Women's Institute other than continuing to make the 1367 President Street property available to the women students who were receiving Jewish religious instruction and education.

In addition, plaintiff has submitted documentary evidence in support of its claims. While Machon Chana Women's Institute pays bills associated with housing the students, including utility bills, plaintiff has submitted a commercial general liability insurance renewal declaration for the July 15, 2014 to July 15, 2015 policy period, showing that NCFJE insures the 1367 President Street property. Plaintiff also submitted a corporate bank resolution from November 4, 1981, opened in the name of Machon Chana Women's

Institute, which authorized Rabbi Jacob J. Hecht, as its executive vice-president, to sign checks on behalf of Machon Chana. Plaintiff annexes copies of checks written on the account of "Machon Chana Special" and "Machom Chana" by Rabbi Jacob J. Hecht and Rabbi Sholem Ber Hecht. Plaintiff also annexes, among other things, a copy of an application to the New York State Board of Equalization and Assessment dated April 5, 1988 filed on behalf of Cong. Machon Chana and signed by Rabbi Jacob J. Hecht as executive vice-president, a copy of a letter from the New York City Department of Finance dated July 13, 1990 addressed to Rabbi Jacob J. Hecht as executive vice-president of Machon Chana, the initial contract of employment for Rabbi Shloma Majeski as school principal and administrator dated September 22, 1980 signed by both Rabbi Jacob J. Hecht and Labkowski, a copy of New York State Department of Labor Unemployment Insurance Reports filed on behalf of Machon Chana for the period January 1, 1986 to March 31, 1986 and signed by Rabbi Jacob J. Hecht, and a copy of an application of Cong. Machon Chana dated June 5, 1985 for cancellation of back taxes signed by Rabbi Jacob J. Hecht as president. Significantly, this June 5, 1985 application stated that Cong. Machon Chana's board of directors were Rabbi Jacob J. Hecht, Yisochar B. Weiss, Benzion Raskin, Labkowski, and Leah Klein.

While some documents refer to Cong. Machon Chana, and others refer to Machon Chana Women's Institute or Machon Chana, rather than Cong. Machon Chana, plaintiff (as previously noted) asserts that the names Cong. Machon Chana, Machon Chana, and Machon

Chana Women's Institute have been used interchangeably. In support of this assertion, plaintiff has submitted a copy of a letter from the Internal Revenue Service, dated September 10, 1984 and addressed to Machon Chana Women's Institute, concerning a tax bill, which is addressed to the address for the headquarters of NCFJE, i.e., 824 Eastern Parkway. The tax identification number listed in that letter is the same as the tax identification number used for Cong. Machon Chana in a renewal application for an exemption from real property taxes, dated May 5, 1987, filed on behalf of Cong. Machon Chana. A copy of IRS Form 941 Employer's Quarterly Federal Tax Return for the first quarter of 1990 filed in the name of Machon Chana also uses this same tax identification number. Copies of employee W-2 statements for 1983, naming the employer as Cong. Machon Chana at 824 Eastern Parkway, also show that some employees were persons working at the dormitory at the 1367 President Street property, such as Gita Gansburg, while others were working at the school, such as Rabbi Shloma Majeski, and that they all contained this same tax identification number.

Plaintiff points out that, in contrast, a copy of a letter from the IRS to Machon Chana Women's Institute, dated March 11, 1996, assigned this entity, which had then been newly formed, a different tax identification number. Plaintiff contends that this constitutes evidence of a split between Machon Chana Women's Institute and Cong. Machon Chana since Machon Chana Women's Institute was required to obtain a separate tax identification number. In this regard, plaintiff further notes that in a letter by Labkowski, she stated that "[a] new corporation was formed as of February 1996 and a new bank account set up."

As further support for plaintiff's contention that the names Cong. Machon Chana and Machon Chana Women's Institute were used interchangeably, plaintiff annexes a letter dated July 29, 1980 addressed to the board of directors of Machon Chana Women's Institute at 824 Eastern Parkway from the accountants for Cong. Machon Chana, enclosing a Statement of Assets, Liabilities and General Fund Balance. Listed as an asset of Machon Chana Women's Institute is the 1367 President Street property, which is undisputedly owned by Cong. Machon Chana.

Furthermore, plaintiff has submitted a 1975 ruling by a Beth Din, which stated that with respect to the dispute between the administration of Cong. Machon Chana, Rabbi Jacob J. Hecht was in charge of financial administration and Labkowski was in charge of educational administration, and that Labkowski needed permission from the financial administration if she wanted "to find support" or "start a new committee." In addition, plaintiff has submitted minutes of a 1979 meeting in which NCFJE elected members of the board. Listed under the heading, "Machon Chana," are the names Rabbi Z. S. Dworkin, Rabbi Mendel Baumgarten, Zev Katz, Labkowski, Leah Klein, and Chave Hecht. Zev Katz and Chave Hecht have each submitted affirmations, in which they attest that they served on Cong. Machon Chana's board of trustees, and that, during some portion of their tenure, Labkowski also served on the board. They both state that they do not recall either Rabbi Gurary, Rabbi Labkowski, Bronstein, or Teleshevsky serving on Cong. Machon Chana's board coterminous with their term of office. These affirmations, along with the

aforementioned submissions, are sufficient to raise a bona fide question of fact as to whether there were members of the board of trustees of Cong. Machon Chana other than Rabbi Gurary, Rabbi Labkowski, Bronstein, and Teleshevsky.

Thus, in view of the fact that there are significant triable issues of fact, as well as credibility, and considering that this is a motion to dismiss, as opposed to a motion for summary judgment, the court must deny defendants' cross motion insofar as it seeks dismissal of plaintiff's action based upon lack of standing, failure to state a cause of action, and based upon the documentary evidence.

Defendants further argue that plaintiff's failure to take action for 17 years following the Attorney General's December 9, 1998 letter shows that plaintiff's claim that the nine Hecht trustees control Cong. Machon Chana must be illegitimate. It contends that plaintiff's instant claim must be dismissed, pursuant to CPLR 3211 (a) (5), as barred by the statute of limitations.

However, the statute of limitations period for a declaratory judgment action cannot begin to run any earlier than "when there is a bona fide justiciable controversy between the parties" (*Zwarycz v Marnia Constr., Inc.*, 102 AD3d 774, 776 [2d Dept 2013]; *see also Charney v North Jersey Trading Corp.*, 172 AD2d 390, 390 [1st Dept 1991]). "[I]n most cases in which declaratory judgment is sought there has been no injury which gave rise to a claim for coercive relief; rather, the parties are in disagreement about their respective legal rights" (*Charney*, 172 AD3d at 390-391 [internal quotation marks omitted]). "To hold that

the existence of disagreement triggers the statute of limitations would be unwise because it would encourage litigation which could prove unnecessary with the passage of time (*Id.* at 391).

Here, the mere existence of a temporary dispute about whether the Hecht petitioners had the right to sell the 1367 President Street property to NCFJE was insufficient in itself to mature the dispute into a justiciable controversy sufficient to start the running of the statute of limitations on the present declaratory judgment action to determine the actual trustees of Cong. Machon Chana and the right to control the 1367 President Street property in order to evict the tenants residing there. Significantly, here, the Attorney General's letter did not resolve the issue of whether the Hecht petitioners or Rabbi Gurary, Rabbi Labkowski, Bronstein, and Teleshevsky were the trustees of Cong. Machon Chana, but, rather, his letter stated that a hearing would be necessary in order to resolve this issue. Plaintiff asserts that it took no action because the 1367 President Street property continued to be used for its intended educational purposes so it saw no reason to continue with its action to transfer title to NCFJE. Moreover, it is unclear as to what transpired between the parties following that time and what NCFJE's role was with respect to Cong. Machon Chana and the 1367 President Street property. Thus, defendants' cross motion, insofar as it seeks dismissal of plaintiff's complaint on the ground of the expiration of the statute of limitations, must be denied.

Plaintiff, in its motion, and defendants, in their cross motion, both seek the relief of a preliminary injunction. Plaintiff seeks to preliminarily enjoin Labkowski from continuing to prosecute the housing court eviction proceeding, from holding herself out as an officer of Cong. Machon Chana, and from taking any action with respect to the 1367 President Street property. Defendants seek to preliminarily enjoin the nine Hecht trustees from, among other things, holding themselves out as the trustees of Cong. Machon Chana and from claiming any right to use or occupy the 1367 President Street property.

“A party seeking the drastic remedy of a preliminary injunction has the burden of demonstrating, by clear and convincing evidence, (1) a likelihood of ultimate success on the merits, (2) the prospect of irreparable injury if the provisional relief is withheld, and (3) a balancing of the equities in the movant's favor” (*Temple-Ashram v Satyanandji*, 84 AD3d 1158, 1161 [2d Dept 2011]; *see also Glorious Temple Church of God in Christ v Dean Holding Corp.*, 35 AD3d 806 [2d Dept 2006]; *Berkoski v Board of Trustees of Inc. Vil. of Southampton*, 67 AD3d 840, 844 [2d Dept 2009]; *Shasho v Pruco Life Ins. Co. of N.J.*, 67 AD3d 663, 665 [2d Dept 2009]).

As to plaintiff's motion, there is an active controversy between the parties that is affecting their rights, which must be determined in this declaratory judgment action. While there are disputed issues of fact, pursuant to CPLR 6312 (c), “[p]rovided that the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers, the presentation by the defendant of evidence sufficient to raise an issue of fact as to

any of such elements shall not in itself be grounds for denial of the motion.” Here, if the facts are as alleged by plaintiff, then it would have a clear right to the relief sought and a likelihood of ultimate success on the merits. “[T]he existence of a factual dispute will not bar the imposition of a preliminary injunction if it is necessary to preserve the status quo and the party to be enjoined will suffer no great hardship as a result of its issuance” (*Melvin v Union Coll.*, 195 AD2d 447, 448 [2d Dept 1993]; *see also Mr. Natural, Inc. v Unadulterated Food Prods.*, 152 AD2d 729, 730 [2d Dept 1989]).

With respect to the relief previously granted to plaintiff by the temporary restraining order and which plaintiff seeks to be continued by a preliminary injunction, plaintiff has demonstrated irreparable injury absent the granting of a preliminary injunction. The students who have paid their tuition and who have no where else to live may be evicted by Labkowski in the housing court eviction proceeding and their ability to continue with their religious studies will be severely impacted. The balance of the equities also favors plaintiff. Defendants have not adequately explained why they are now seeking to evict these returning students who have paid their tuition. Furthermore, defendants can be compensated in monetary damages for any loss due to not being able to otherwise occupy the 1367 President Street property. Under these circumstances, “a preliminary injunction should be granted to maintain the status quo while the legal issues are determined in a deliberate and judicious manner” (*Matter of Merscorp, Inc. v Romaine*, 295 AD2d 431, 434 [2d Dept 2002]). Indeed, the determination of whether Labkowski has the right, in the eviction proceeding, to evict the

tenants at the 1367 President Street property is dependent upon the determination to be made in this action. Thus, the relief granted in the temporary restraining order must be continued by a preliminary injunction, and defendants' cross motion, insofar as it seeks to vacate the temporary restraining order, must be denied. Plaintiff shall be required to post an undertaking pursuant to CPLR 6312 (b).

To the extent that plaintiff's motion for a preliminary injunction seeks broader relief than that granted in the temporary restraining order, i.e., enjoining defendants from acting on behalf of, or taking any action in the name of Cong. Machon Chana or from having any authority whatsoever to take any action on Cong. Machon Chana's behalf, such relief must be denied since plaintiff has not demonstrated any irreparable injury which would warrant such relief. The preliminary injunction granted to plaintiff should be limited to enjoining defendants from continuing to prosecute the eviction proceeding or otherwise acting to remove the tenants at the 1367 President Street property.

As to defendants' cross motion, insofar as it seeks a preliminary injunction enjoining the nine Hecht trustees, defendants have failed to demonstrate irreparable injury absent the granting of such a preliminary injunction. They have failed to point to any imminent or non-speculative harm that would result to them in the absence of a preliminary injunction (*see Family-Friendly Media, Inc. v Recorder Tel. Network*, 74 AD3d 738, 739-740 [2d Dept 2010]). They have also failed to show that a balance of the equities favors such a preliminary injunction. Therefore, such relief must be denied.

Defendants, in their cross motion, also seek costs and sanctions, pursuant to 22 NYCRR 130.1.1, arguing that this action is frivolous and that plaintiff has engaged in frivolous conduct. In view of the court's determinations, as discussed above, it does not find plaintiff to have engaged in frivolous conduct and, thus, defendants' request for this relief must be denied.

CONCLUSION

Accordingly, plaintiff's motion is granted insofar as it seeks a preliminary injunction restraining defendants, their agents, servants, and employees, and all persons and entities acting by, through, or on their behalf, from continuing with the prosecution of the housing court eviction proceeding, and that proceeding is hereby stayed until further order of this court. Plaintiff shall post an undertaking pursuant to CPLR 6312 (b). The parties are hereby ordered to provide this court with documentation as to what the amount of the undertaking should be within 20 days of service of a copy of this decision and order with notice of entry thereof, and plaintiff will be required to give an undertaking in the amount to be determined by this court after review of the submitted documentation, unless the parties otherwise stipulate to an amount. Plaintiff's motion, to the extent that it seeks a preliminary injunction granting broader relief, is denied. Defendants' cross motion is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R

J. S. C.

HON. LAWRENCE KNIPEL
SUPREME COURT JUSTICE

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