

<b>Machon Chana Women's Inst., Inc. v Hecht</b>
2016 NY Slip Op 31429(U)
July 21, 2016
Supreme Court, Kings County
Docket Number: 513701/15
Judge: Lawrence S. Knipel
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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 21<sup>st</sup> day of July, 2016.

P R E S E N T:

HON. LAWRENCE KNIPEL,  
Justice.

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MACHON CHANA WOMEN'S INSTITUTE, INC. AND  
CONGREGATION MACHON CHANA, A RELIGIOUS  
CORPORATION,

Plaintiffs,

- against -

Index No. 513701/15

SHEA HECHT, SHIMON HECHT, SHLOMA L.  
ABRAMOWITZ, CHARLIE KUPFERMAN, STEVE  
RUBEL, MILTON E. KRAMER, LEVKA KAPLAN,  
BAILA HECHT, ALEX BERKOWITZ, SHLOMA  
MAJESKI AND THE NATIONAL COMMITTEE FOR  
FURTHERANCE OF JEWISH EDUCATION D/B/A  
MACHON CHANA WOMEN'S INSTITUTE, MACHON  
CHANA JEWISH WOMEN'S INSTITUTE, AND  
MACHON CHANA WOMEN'S YESHIVA,

Defendants.

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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_____	13-32_____
Opposing Affidavits (Affirmations)_____	37-47_____
Reply Affidavits (Affirmations)_____	49-61_____
_____Affidavit (Affirmation)_____	_____
Memoranda of Law_____	33 36 62_____

Upon the foregoing papers, in this action by plaintiffs Machon Chana Women's Institute, Inc. (Machon Chana Women's Institute) and Congregation Machon Chana, a religious corporation (collectively, plaintiffs) against defendants Shea Hecht, Shimon Hecht, Shloma L. Abramowitz, Charlie Kupferman, Steve Rubel, Milton E. Kramer, Levka Kaplan, Baila Hecht, and Alex Berkowitz (collectively, the individual defendants), Shloma Majeski (Rabbi Majeski), and the National Committee for Furtherance of Jewish Education d/b/a Machon Chana Women's Institute, Machon Chana Jewish Women's Institute, and Machon Chana Women's Yeshiva (NCFJE) (collectively, defendants) alleging 17 causes of action and seeking declaratory relief, damages, and injunctive relief, defendants move, under motion sequence number one, for an order, pursuant to CPLR 3211 (a) (4), (7), and (11), and Not-For-Profit Corporation Law § 720-a: (1) dismissing all claims asserted against the individual defendants in their entirety and with prejudice, (2) dismissing the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, twelfth, thirteenth, fourteenth, fifteenth, and sixteenth causes of action asserted in plaintiffs' complaint in their entirety and with prejudice, or in the alternative, (3) dismissing and/or staying this action in its entirety, pending the resolution of the issues raised in the previously filed action, which is presently pending, entitled *Cong. Machon Chana, a Religious Corporation v Machon Chana Women's Institute, Inc. and Sara Labkowski* (Sup Ct, Kings County, index No. 503045/15) (action number one), which involves substantially the same parties and is based upon substantially the same claims as raised in this action, and (4) granting such other and further

relief as the court may deem just and proper, including without limitation, costs, disbursements, and reasonable attorney's fees.

### **Facts and Procedural Background**

Machon Chana Women's Institute originally began its operations in 1972 as an unincorporated entity at the urging of the late Labavitcher Rebbe Menachem M. Schneerson (Rebbe Schneerson) for the purpose of conducting Jewish outreach, Torah study, and adult education classes to women of post high school age. Rebbe Schneerson allowed Machon Chana Women's Institute to be named after his mother, Chana. In furtherance of the establishment of this school, on June 8, 1973, Congregation Machon Chana was incorporated by Labkowsky and several others 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. The purposes of Congregation Machon Chana, as set forth on its certificate of incorporation, were to own and maintain real property for its benefit and purposes, and to hold and conduct classes in religious subjects. The initial trustees of Congregation Machon Chan were Rabbi Zalman Labkowsky (Rabbi Labkowsky), Rabbi Nathan Gurary (Rabbi Gurary) and Baila Bronstein (Bronstein). According to plaintiffs, the only change in the trustees of Congregation Machon Chana occurred when Riva Teleshevsky (Teleshevsky) took the place of Rabbi Gurary when he passed away in 2005. Labkowsky claims that at all times, she has served as the president of Congregation Machon Chana.

By a deed dated February 1, 1974, Congregation Machon Chana purchased real property located at 1367 President Street in Brooklyn (the 1367 President Street property) to serve as a dormitory for the students of Machon Chana Women's Institute while they engaged in Torah study there. Following its purchase, the 1367 President Street property was continuously used for this purpose, and Congregation Machon Chana retains title to this property.

Financial support for Congregation Machon Chana, Machon Chana Women's Institute, and the 1367 President Street property came from outside charitable organizations, including NCFJE, which is an organization that was founded in 1940 for the principal purpose of providing Jewish public school students with a free Jewish education, and whose mission, since that time, has expanded to include an array of programs to all sectors of the Jewish community. NCFJE was headed by the late Rabbi Jacob J. Hecht, who was a close confidant of Rebbe Schneerson. Labkowski ran Machon Chana Women's Institute in conjunction with Rabbi Jacob J. Hecht, who provided financial support to the school. This began in the fall of 1973 when Labkowski, at the suggestion of Rebbe Schneerson, entered into a Yissachar/Zevulun relationship for the school with Rabbi Jacob J. Hecht, pursuant to which Labkowski, as the Yissachar, oversaw the Torah study of many women and was responsible for and in charge of the education offered by Machon Chana Women's Institute and its administration and operation, and Rabbi Jacob J. Hecht, as the Zevulun, was responsible for providing Machon Chana Women's Institute with financial support.

In an employment contract dated September 22, 1980, signed by Rabbi Jacob J. Hecht and Labkowski, on behalf of Machon Chana Women's Institute, Rabbi Majeski was hired by Machon Chana Women's Institute as its principal. After Rabbi Jacob J. Hecht unexpectedly died in 1990 at age 66, his sons, who are Rabbi Shea Hecht, Rabbi Sholem Ber Hecht, and Rabbi Shimon Hecht (the Hechts), assumed Rabbi Jacob J. Hecht's responsibilities in the running of the school, and they continued to support Machon Chana Women's Institute and the 1367 President Street property. According to Labkowski, she gave the Hechts the opportunity to take over the role of Zevulun for Machon Chana Women's Institute for a trial period, but they failed to make sufficient financial contributions to the school, resulting in cuts to vital programs and unpaid staff salaries for more than a year. She asserts that in the 1995 to 1996 school year, the Hechts refused to open the doors of Machon Chana Women's Institute's classroom buildings, and, subsequently, in a filing with the New York Attorney General, claimed that their and their father's financial contributions to Machon Chana Women's Institute were merely loans, a concept which is antithetical to the Yissachar/Zevulun framework.

Plaintiffs allege that the Hechts attempted to have NCFJE control Machon Chana Women's Institute and Congregation Machon Chana. As evidenced by a Proposal for the Structure of Machon Chana Committee, NCFJE and the Hechts sought to continue Machon Chana Women's Institute under the umbrella of NCFJE and sought to set up a Machon Chana committee comprised of members delegated by the board of NCFJE plus three or four

new members to be recruited by the Crown Heights community. They stated, in this proposal, that Machon Chana was seen as a division of NCFJE by virtue of Rabbi Jacob J. Hecht's former role as the Zevulum of Machon Chana Women's Institute and Congregation Machon Chana. According to plaintiffs, however, neither Congregation Machon Chana nor Machon Chana Women's Institute was ever a subsidiary of NCFJE.

Due to the rift that had developed between the Hechts and Labkowsky concerning financial issues and disagreements over control of the day-to-day operations of the school, Labkowsky incorporated Machon Chana Women's Institute on February 22, 1996 by filing a certificate of incorporation with the Kings County Clerk's Office under Not-For-Profit Corporation Law § 402. According to the Hechts, Machon Chana Women's Institute was formed by Labkowsky as a separate "breakaway entity" from NCFJE. In response to this incorporation, Rabbi Sholem Ber Hecht forced Machon Chana Women's Institute to permanently leave its classrooms, and Labkowsky found a temporary classroom facility for Machon Chana Women's Institute, and, in 1999, following fund-raising activities, Machon Chana Women's Institute purchased a new building for classrooms at 556 Crown Street.

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. No financial support from the Hechts was provided to Machon Chana Women's Institute, which was operated by Labkowsky.

According to Labkowski, from late 2013 through the summer of 2014, she, acting as Machon Chana Women's Institute's director, repeatedly asked Rabbi Majeski to comply with Machon Chana Women's Institute's bookkeeping requirements, but he refused to allow Machon Chana Women's Institute's bookkeepers to have access to the records for the account in which he collected donations on behalf of Machon Chana Women's Institute. 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 [Hebrew for institute] are implemented," and to "[p]lease let [her] know by Sunday night if you are ready to meet on Monday to work on them." Labkowski states that Rabbi Majeski never responded to her e-mail and ignored all of her attempts to resolve the matter.

Rabbi Majeski asserts that Labkowski fired him and also fired other members of Machon Chana Women's Institute's faculty, and locked the students out of the dormitory. According to Rabbi Majeski, in August 2014, he and other faculty members were told by Labkowski that they were being discharged from the school and would need to be "rehired" under new terms and conditions. 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. Congregation Machon Chana, by Labkowski, as its president, then commenced an eviction proceeding against the dormitory supervisor and the students who were occupying the rooms. The dormitory supervisor and these students, as petitioners, then commenced a lock out 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.

According to Labkowski, on August 14, 2014, she changed the locks on Machon Chana Women's Institute's building when school was not in session, and that, over the following several weeks, Machon Chana Women's Institute hired new staff for the school for the fall 2014 semester. On August 30, 2014, Labkowski and the new staff allegedly awaited the arrival of the fall 2014 students. Labkowski claims, however, that the fall 2014 students were intercepted by NCFJE, which, using allegedly misappropriated e-mail addresses, directed them to its newly created school, located at 825 Eastern Parkway, which was staffed by Rabbi Majeski as its principal and the employees of Machon Chana Women's Institute that had joined Rabbi Majeski. Thereafter, NCFJE and Rabbi Majeski extensively and continuously used Machon Chana Women's Institute's name and variations of its name,

including Machon Chana Jewish Women's Institute, Machon Chana Women's Yeshiva, and Machon Chana, as the name of their school. They used these names on signs at the school, in advertising the school to students, and in soliciting donations, and these names were specifically used on emblems, signs, flyers, fund-raising materials, websites, and social media.

On March 17, 2015, action number one was filed by the plaintiff therein (the action number one plaintiff), who claimed to be Congregation Machon Chana and that its board of trustees actually consists of Rabbi Shloma 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 purported Hecht trustees) who are the individual defendants in the present action.

The complaint in action number one alleges two causes of action against Machon Chana Women's Institute and Labkowski, who are the plaintiffs in the present action. The first cause of action seeks a declaratory judgment that the action number one plaintiff is the owner of all right, title, and interest to the 1367 President Street property, that it has the right to control and use the 1367 President Street property, that Labkowski is not a member of Congregation Machon Chana's board of trustees, and that Labkowski is not an officer of Congregation Machon Chana, has no authority to act on its behalf, has no power to file and prosecute the eviction proceeding with respect to the 1367 President Street property on its behalf, and has no right to use the Machon Chana name in a way that is misleading to the

public. The second cause of action seeks to restrain Machon Chana Women's Institute and Labkowski from acting on behalf of Congregation Machon Chana and to stay all eviction proceedings until there is a judicial determination as to which party has the right to prosecute such matter.

In action number one, Labkowski claims that she has held the office of the president of Congregation Machon Chana since its formation in 1973, and that Congregation Machon Chana's trustees are not the nine purported Hecht trustees, but are actually Rabbi Labkowski, Teleshevsky (who filled the vacancy of Rabbi Gurary after his death in 2005), and Bronstein, who were listed as the three trustees of Congregation Machon on its certificate of incorporation. The action number one plaintiff moved, in that action, for a preliminary injunction enjoining and restraining Machon Chana Women's Institute and Labkowski from acting on behalf of Congregation Machon Chana, holding Labkowski out as an officer and/or member of the board of trustees of Congregation Machon Chana, continuing to prosecute the eviction proceeding in the name of Congregation Machon Chana, and interfering with the right of Congregation Machon Chana to use the 1367 President Street property. Machon Chana Women's Institute and Labkowski, in response, cross-moved in action number one to, among other things, enjoin the nine purported Hecht trustees from holding themselves out as and/or acting as directors/trustees, officers, or members of Congregation Machon Chana and from claiming the right to use the 1367 President street property, and to dismiss the complaint.

A decision and order dated August 21, 2015 was rendered by the court in action number one, which granted the action number one plaintiff's motion only insofar as it sought a preliminary injunction restraining the prosecution of the eviction proceeding and it otherwise denied the relief sought by it, and it denied the cross motion. In its August 21, 2015 decision and order, the court found that as to the action number one plaintiff's motion, an active controversy existed between the parties affecting their rights, which must be determined in that declaratory judgment action. Specifically, it found that there was a triable issue of fact as to whether there were members of the board of trustees of Congregation Machon Chana other than Rabbi Gurary, Rabbi Labkowski, Bronstein, and Teleshevsky, and whether Rabbi Gurary, Rabbi Labkowski, Bronstein, and Teleshevsky were the sole and rightful trustees of Congregation Machon Chana or whether the nine purported Hecht trustees were its trustees. It further found that it was unclear as to what NCFJE's role was with respect to Congregation Machon Chana and the 1367 President Street property.

On November 9, 2015, plaintiffs filed the instant action, which alleges 17 causes of action against the individual defendants (i.e., the nine purported Hecht trustees), Rabbi Majeski, and NCFJE, who, they claim, conspired together to usurp the school, Congregation Machon Chana, and the 1367 President Street property from them. Plaintiffs' complaint includes claims related to Machon Chana Women's Institute, as well as Congregation Machon Chana, and alleges causes of action for trespass, conversion, replevin, trademark infringement and unfair competition in violation § 43 (a) of the Lanham Act, injury to

business reputation and trademark dilution pursuant to General Business Law § 360-l, common-law trademark infringement, unlawful use of name or other identification of certain non-profit organizations pursuant to General Business Law § 397, false advertising pursuant to General Business Law § 350, misappropriation of trade secrets, common-law unfair competition, tortious interference with business relations, and unjust enrichment. Plaintiffs, in their complaint, seek damages, in addition to declaratory and injunctive relief. On February 29, 2016, defendants brought their present motion to dismiss this action or to alternatively stay it pending the resolution of action number one. Plaintiffs oppose defendants' motion.

#### **Discussion**

In their motion, defendants argue that this action should be stayed in its entirety, pending the resolution of the issues raised in action number one. CPLR 3211 (a) (4) provides that a dismissal of an action may be granted where “there is another action pending between the same parties for the same cause of action in a court of any state or the United States.” It further provides that “the court need not dismiss upon this ground but may make such order as justice requires” (CPLR 3211 [a] [4]). Thus, “[w]here there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same, a court has broad discretion in determining whether an action should be dismissed [or stayed] pursuant to CPLR 3211 (a) (4) on the ground that there is another action pending” (*Aurora Loan Servs., LLC v Reid*, 132 AD3d 788, 788-789 [2d Dept 2015], quoting

*Scottsdale Ins. Co. v Indemnity Ins. Corp. RRG*, 110 AD3d 783, 784 [2d Dept 2013]; *see also Whitney v Whitney*, 57 NY2d 731, 732 [1982]; *Matter of Willnus*, 101 AD3d 1036, 1037 [2d Dept 2012], *lv dismissed in part, denied in part* 22 NY3d 1060 [2014]; *AIG Fin. Prods. Corp. v Penncara Energy, LLC*, 83 AD3d 495, 495 [1st Dept 2011]; *Montalvo v Air Dock Sys.*, 37 AD3d 567, 567 [2d Dept 2007]; *Liebert v TIAA-CREF*, 34 AD3d 756, 757 [2d Dept 2006]).

As to the identity of the parties, “[s]ubstantial, not complete, identity of parties is all that is required to invoke CPLR 3211 [(a) (4)]” (*Barringer v Zgoda*, 91 AD2d 811, 811 [3d Dept 1982]; *see also White Light Prods. v On The Scene Prods.*, 231 AD2d 90, 93-94 [1st Dept 1997]; *Case Capital Corp. v Morgan Invs.*, 154 AD2d 501, 501 [2d Dept 1989]). Here, the defendants in action number one are the plaintiffs in the instant action. While action number one was initiated in the name of Congregation Machon Chana, plaintiffs concede, in their answer in action number one, that action number one was brought by those purporting to act on behalf of Congregation Machon Chana and claiming to be its board members, namely, Rabbi Shea Hecht, Rabbi Shimon Hecht, Shloma L. Abramowitz, Charlie Kupferman, Dr. Steve Rubel, Milton E. Kramer, Rabbi Levka Kaplan, Rebbetzin Baila Hecht, and Alex Berkowitz, and the organization under which they are attempting to claim that Machon Chana operates, NCFJE. While Rabbi Majeski is not a party to action number one, he has submitted an affirmation in that action, and there were allegations raised concerning him in the cross motion in action number one. Furthermore, the presence of

additional parties does not defeat a motion pursuant to CPLR 3211 (a) (4) (*see White Light Prods.*, 231 AD2d at 94; *Case Capital Corp.*, 154 AD2d at 501). Thus, the requirement of substantial identity of the parties has been satisfied.

As to the question of whether the two actions are sufficiently similar and the relief sought is substantially the same, the court notes that “[t]he critical element is that both suits arise out of the same subject matter or series of alleged wrongs” (*Cherico, Cherico & Assoc. v Midollo*, 67 AD3d 622, 622 [2d Dept 2009] [internal quotation marks omitted]; *see also Whitney*, 57 NY2d at 732; *Kent Dev. Co. v Liccione*, 37 NY2d 899, 901 [1975]; *Matter of Willnus*, 101 AD3d at 1037; *DAIJ, Inc. v Roth*, 85 AD3d 959, 960 [2d Dept 2011]; *White Light Prods.*, 231 AD2d at 94). It is not necessary that the precise legal theories presented in the first action also be presented in the second action (*see Matter of Schaller v Vacco*, 241 AD2d 663, 663 [3d Dept 1997]). Rather, it is necessary only that the pleadings be based upon the same actionable wrong (*see JC Mfg. v NPI Elec.*, 178 AD2d 505, 506 [2d Dept 1991]).

Here, while defendants have alleged additional causes of action and seek damages in addition to declaratory and injunctive relief, both action number one and this action arise out of the same subject matter or series of alleged wrongs. Moreover, the resolution of plaintiffs’ claims in this action and whether the individual defendants are proper parties to this action are dependent upon who are the actual trustees of Congregation Machon Chana, which is the

subject of and will be determined in action number one. Thus, there is a sufficient similarity of the claims and relief sought in the two actions.

Dismissal of this action, however, is not the proper remedy since if plaintiffs prevail in their claims in action number one, they will be entitled to relief with respect to the claims asserted by them in this action. Whenever an issue must yet be determined in a prior action before a determination can be made in the subsequent action as to whether there should be a dismissal of claims or a determination in favor of a party, it is appropriate to stay the second action pending the determination in the prior action (*see Lawler v TropWorld Casino & Entertainment Resort*, 238 AD2d 383, 383-384 [2d Dept 1997]; *SafeCard Servs. v American Express Travel Related Servs. Co.*, 203 AD2d 65, 65-66 [1st Dept 1994]; *Case Capital Corp.*, 154 AD2d at 501; David D. Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:20 at 35). Here, such a stay must be applied to the present action so as to await the possible use of res judicata or collateral estoppel from action number one with respect to who are the rightful trustees of Congregation Machon Chana and who is entitled to control and use the 1367 President Street property, and to enable this court to make certain determinations in this action, including whether the individual defendants are proper parties to this action and whether plaintiffs are entitled to the relief sought by them in this action (*see* David D. Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:20 at 35). The court's general stay power, afforded by CPLR 3211

(a) (4), emanates from CPLR 2201, which provides that “the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.”

Demonstrating that this case is a proper case for a stay is the fact that the determination of whether the individual defendants should be dismissed from this action cannot be rendered until there is a resolution of the issue of who are the proper trustees of Congregation Machon Chana. Not-For-Profit Corporation Law § 720-a provides that with certain limited exceptions, “no person serving without compensation as a director, officer or trustee of a corporation, association, organization or trust described in section 501 (c) (3) of the United States internal revenue code shall be liable to any person other than such corporation, association, organization or trust based solely on his or her conduct in the execution of such office unless the conduct of such director, officer or trustee with respect to the person asserting liability constituted gross negligence or was intended to cause the resulting harm to the person asserting such liability.” CPLR 3211 (a) (11) provides that an action should be dismissed if a party is immune from liability pursuant to Not-For-Profit Corporation Law § 720-a. On a motion by a defendant based upon CPLR 3211 (a) (11), the court is required to review the proof and make a determination on an expedited basis, at the threshold of the action, of the issue of whether the defendant is entitled to the benefit of Not-For-Profit Corporation Law § 720-a. This is because the legislative intent of CPLR 3211 (a) (11) is “to curtail litigation against persons engaged in nonpaid charitable activities in its earliest stages” (*Rabushka v Marks*, 229 AD2d 899, 900 [3d Dept 1996]; see also *Krackeler*

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*Scientific, Inc. v Ordway Research Inst., Inc.*, 97 AD3d 1083, 1084 [3d Dept 2012]). The purpose of CPLR 3211 (a) (11) "is not only to relieve the defendant of liability, but also to spare the defendant even the burden of defending the lawsuit, unless the court is convinced, by the total proof before it on and in opposition to the defendant's CPLR 3211 (a) (11) motion, that it is 'probable' that the defendant [is not afforded immunity from the lawsuit such as where the defendant] was grossly negligent or did something intended to bring about harm" or if he or she was not, in fact, a trustee of an exempt organization (David D. Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:34a at 55; *see also Krackeler Scientific, Inc.*, 97 AD3d at 1084).

Here, the individual defendants have each submitted an affirmation stating that he or she is a trustee of Congregation Machon Chana and has served as such without compensation. There is no dispute that Congregation Machon Chana is a religious corporation which is tax exempt. However, the issue of whether the individual defendants are, in fact, trustees of Congregation Machon Chana is at the heart of action number one and has not yet been determined. If the court were to permit the present action to move forward without first determining whether the individual defendants are trustees and subject to qualified immunity under Not-For-Profit Corporation Law § 720-a, this would frustrate the legislative aim of that section and that of CPLR 3211 (a) (11) since it would require *the* individual defendants to incur the burden of defending this action before such a determination is made.

In addition, plaintiffs' claims in this action are dependent upon the resolution of action number one. Plaintiffs' first cause of action for a declaratory judgment as to the rightful trustees and president of Congregation Machon Chana is duplicative of the very relief sought in action number one. Plaintiffs' second cause of action for trespass, third cause of action for conversion, and fourth cause of action for replevin are dependent upon a finding that defendants wrongfully occupied and took control of the 1367 President Street property and its contents and were unauthorized to do so, which is an issue that has been raised and requires resolution in action number one. Plaintiffs' remaining causes of action seek relief against all defendants, including the individual defendants, whose claimed immunity from liability must await a determination in action number one of who are the rightful trustees of Congregation Machon Chana. While plaintiffs have asserted various trademark, unfair competition, and false advertising claims in this action, there will be no prejudice to them by a stay of these claims since the court has already granted a petition by Machon Chana Women's Institute for a permanent injunction, pursuant to General Business Law § 135, restraining and enjoining NCFJE and Rabbi Majeski from using the name Machon Chana Women's Institute or any variation of its name that is likely to deceive the public, in a related proceeding entitled *Matter of Machon Chana Women's Institute, Inc. v National Committee for Furtherance of Jewish Education* (Sup Ct, Kings County, index No. 513767/15). Thus, plaintiffs have already been granted the injunctive relief sought by them in their seventeenth

cause of action, and no further alleged damages based upon the use of Machon Chana Women's Institute's name should occur while this action is stayed.

In view of the granting of a stay of the present action, the court, in the interest of judicial economy, need not address defendants' alternative request for dismissal of plaintiffs' claims for failure to state a cause of action, pursuant to CPLR 3211 (a) (7), at this juncture since the issue of whether some of these claims state a cause of action, such as plaintiffs' claims for trespass, conversion, and replevin, is dependent upon the outcome of action number one.

### Conclusion

Accordingly, defendants' motion is granted insofar as it seeks a stay of this action, pursuant to CPLR 3211 (a) (4), pending the resolution of action number one. Defendants' motion, insofar as it seeks dismissal of plaintiffs' claims against the individual defendants, is premature and must await the resolution of action number one. Defendants' motion, insofar as it seeks dismissal of plaintiffs' claims, pursuant to CPLR 3211 (a) (7), for failure to state a cause of action, is likewise premature at this juncture.

This constitutes the decision and order of the court.

ENTER  
J. S. C.  
HON. LAWRENCE KNIPEL