

Eltingville Lutheran Church v Rimbo

2016 NY Slip Op 33164(U)

June 10, 2016

Supreme Court, Richmond County

Docket Number: Index No. 150331/16

Judge: Philip G. Minardo

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

-----X
ELTINGVILLE LUTHERAN CHURCH,

Plaintiff,

-against-

ROBERT RIMBO, in his capacity as Bishop of
THE METROPOLITAN NEW YORK SYNOD OF THE
EVANGELICAL LUTHERAN CHURCH IN AMERICA,
and THE METROPOLITAN NEW YORK SYNOD OF
THE EVANGELICAL LUTHERAN CHURCH IN AMERICA,

Defendants,
-----X

DCM Part 6
Present:
Hon. Philip G. Minardo

DECISION AND ORDER

Index No. 150331/16
Motion No. 1131-001

The following papers numbered 1 to 3 were fully submitted on the 28th day of April, 2016:

	Pages Numbered
Order to Show Cause for Preliminary Injunction by Plaintiff, with Supporting Affirmation and Exhibits (dated March 18, 2016).....	1
Affirmation in Opposition by Defendants, with Supporting Affirmation and Exhibits (dated April 13, 2016).....	2
Reply Affirmation, with Supporting Affirmation and Exhibit (dated April 26, 2016).....	3

Upon the foregoing papers, plaintiff's motion for a preliminary injunction is granted.

This is an action for a preliminary and permanent injunction to enjoin defendants from (1) closing plaintiff church, (2) seizing plaintiff's real property and (3) interfering with the day-to-day operations of plaintiff's church and school. The action also seeks a declaratory judgment that the defendants have violated Religious Corporations Law §§17-c(1), (2)(iii).

To the extent relevant, plaintiff Eltingville Lutheran Church (hereinafter "plaintiff") is a

member of the Evangelical Lutheran Church of America (hereinafter “ELCA”) (*see* Verified Complaint, para 5). Defendant Robert Rimbo is the Bishop of defendant Metropolitan New York Synod of the Evangelical Lutheran Church of America (hereinafter “Synod”) (*id.* at 6). The Synod is a regional organization of Lutheran churches, existing for the purpose of overseeing the mission of ELCA within its defined territory, including Richmond County, where plaintiff is located (*id.* at 5-6).

According to the Verified Complaint, “Plaintiff is operating independently without any outside financial support and is not in any danger of any imminent or other closure by reason of being unable to meet [its] expenses” (*id.* at 22). In addition, plaintiff maintains that it “has not disbanded”; “has maintained religious services at all times”; “is capable to and has at all times protected its property and assets from waste and deterioration”; and its “members are not so diminished in numbers as to make it impractical for Plaintiff to operate its church” (*id.* at 23-26). Nevertheless, in a letter dated February 9, 2016, defendants advised plaintiff that if it did not consent to permanent synod administration, defendants would force plaintiff to close due to alleged “financial mismanagement” (*see* Plaintiff’s Exhibit “E”).

In relevant part, Religious Corporation Law §17-c(1) provides that “The synod having jurisdiction over a particular congregation of the Lutheran Church in America, may declare defunct any congregation, belonging to the synod, which has disbanded, or has ceased or failed to maintain religious worship or services according to the tenets and usages of the Lutheran Church, or whose membership has so diminished in numbers as to render it impossible or impracticable for such congregation to fulfill the purposes for which it was organized or to protect its property from waste and deterioration, or having departed from membership in the Lutheran Church in America, without the consent of a convention of the synod”. Religious Corporation Law §17-c (2)(iii) further provides

that “The relationship between a congregation of the Evangelical Lutheran church in America and the church may be terminated... [if t]he membership of the congregation becomes so scattered or diminished in numbers as to make it impracticable for such congregation to fulfill the purposes for which it was organized. In such case, the synod in order to protect the property from waste and deterioration... may take charge and control of the property of the congregation to hold, manage, and convey the same on behalf of the synod”.

In its motion by way of an order to show cause, plaintiff seeks an order that defendants be enjoined during the pendency of this action from (1) imposing Synodical Administration upon plaintiff and (2) taking any and all actions to close the plaintiff church or interfere with its day-to-day operations. In support, plaintiff’s church council president, Ann Thompson, attests that church property has been valued at over \$4,000,000 (*see* Affidavit of Ann Thompson, para 6); that the church sponsors and operates a Lutheran school on the adjacent property as well as various community organizations, including a Boy Scout Troop (*id.* at 7); that the school has “99 students and a thriving pre-k program” (*id.* at 16); and that it has an average attendance at Sunday worship services of 30 out of approximately 80 active members (*id.* at 10). According to Thompson, the church is financially solvent, with current cash assets exceeding \$350,000 (*id.* at 11). Finally, she states that on February 17, 2016, plaintiff’s church council voted to withdraw from ELCA in order to pursue a new affiliation with the North American Lutheran Church (*id.* at 28; *see also* Plaintiff’s Exhibits “H”, “I”).

In opposition, defendants contend that the Court lacks jurisdiction to review an ecclesiastic determination of the regional expression of a national church body.

It is well settled that the Establishment Clause of the First Amendment of the United States

Constitution, which is binding on the states through the Fourteenth Amendment, guarantees religious bodies “independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine” (*see Matter of Ming Tung v. China Buddhist Assn*, 124 AD3d 13, 18 [1st Dept 2014]). As a consequence, courts are forbidden from “interfering in or determining religious disputes, because there is substantial danger that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs” (*id.* at 18). Accordingly, it is only when disputes can be resolved by the application of neutral principles of law that the courts are permitted to intervene (*id.*).

The neutral principles of law approach allows the court to apply such principles to a dispute, even if a religious body is involved. In doing so, the court may examine internal organizational documents, like the bylaws, which may apply to or shed light on the dispute, as well as the provisions of the Religious Corporations Law. Where disputes concern real property, the court may also look to the relevant deeds to resolve the issues before it (*id.*).¹

Defendants contend that plaintiff church is subject to §13.24 of the Synod Council Constitution, which provides that “Synod Administration may be imposed by the Synod Council to protect a congregation’s property from waste and deterioration. If any congregation of this synod has disbanded, or if the members... agree that it is no longer possible for it to function... or if it is the opinion of the Synod Council that the membership of a congregation has become... scattered or ... diminished...the Synod Council... may take charge and control of the [congregation’s] property”.

¹The parties do not dispute that the deed to the subject property is in plaintiff’s name (*see* Plaintiff’s Exhibit “B”).

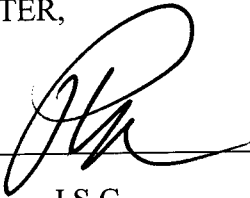
Here, the parties' dispute over the control of church property does not appear to be based "predominantly [on] religious disagreements" (*cf. Matter of Ming Tung v. China Buddhist Assn*, 124 AD3d at 19). Rather, defendants' letter dated February 9, 2016 notified plaintiff of its intent to close its church due to an alleged "financial mismanagement" (*see* Plaintiff's Exhibit "E"). Moreover, although the parties dispute whether the membership of the congregation has become so diminished in numbers as to render it impossible or impractical to fulfill its intended purpose, they do not raise any issues, *e.g.*, membership standards, based on religious criteria (*cf. Matter of Ming Tung v. China Buddhist Assn*, 124 AD3d at 20). Accordingly, the Court opines that the issues raised herein do not pertain to ecclesiastical matters, and can be resolved through the application of "neutral principles of law" (*see Merkos L'Inyonei Chinuch, Inc v. Sharf*, 59 AD3d 403, 407 [2nd Dept 2009]; *cf. Upstate NY Synod of Evangelical Lutheran Church in Am v. Christ Evangelical Lutheran Church of Buffalo*, 185 AD2d 693, 694 [4th Dept 1992]).

Turning to plaintiff's motion, brought by way of an order to show cause, for the issuance of a preliminary injunction, its entitlement to relief requires a showing of (1) a probability of success on the merits, (2) the danger of irreparable injury in the absence of the issuance of an injunction, and (3) that a balance of the equities lies in its favor (*see Church of God Pentecostal Fountain of Love, MI v. Iglesia de Dios Pentecostal, MI*, 27 AD3d 685, 686 [2nd Dept 2006]). Here, the affidavit of the church council president is sufficient to establish prima facie that plaintiff's membership has not so diminished in numbers as to impair the fulfillment of its intended purpose, and that it is financially solvent. In opposition, defendants have presented no evidence to refute these allegations. In addition, it is evident that the closure of church pendente lite would cause it and its parishioners irreparable harm by depriving the latter of a place to worship. Thus, a balancing of the equities favors the granting of a preliminary injunction.

Accordingly, it is

ORDERED that the Plaintiff's motion, brought by Order to Show Cause, for the issuance of a preliminary injunction, is granted.

ENTER,



A handwritten signature in black ink, appearing to be 'P. G. Minardo', written over a horizontal line.

J.S.C.

Hon. Philip G. Minardo

DATED:

June 10 2016