

**St. Paul 's Evangelical Lutheran Church of Coney Is.
v Metropolitan N.Y. Synod of the Evangelical
Lutheran Church in Am.**

2017 NY Slip Op 32343(U)

October 19, 2017

Supreme Court, Kings County

Docket Number: 501944/16

Judge: Bernard J. Graham

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At an IAS Term, Part 36 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 19th day of October, 2017.

P R E S E N T:

HON. BERNARD J. GRAHAM,
Justice.

-----X
ST. PAUL'S EVANGELICAL LUTHERAN CHURCH OF
CONEY ISLAND,

Plaintiff,

- against -

Index No. 501944/16

METROPOLITAN NEW YORK SYNOD OF THE
EVANGELICAL LUTHERAN CHURCH IN AMERICA,

Defendant.

-----X

The following papers numbered 1 to 4 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed_____	1-2
Opposing Affidavit (Affirmation)_____	3
Reply Affidavit (Affirmation)_____	4

Upon the foregoing papers, defendant Metropolitan New York Synod of the Evangelical Lutheran Church in America (the Synod) moves, pursuant to CPLR 2221, for an order granting it leave to renew and reargue the motion for a preliminary injunction filed by plaintiff, St. Paul's Evangelical Lutheran Church of Coney Island (St. Paul's), which this court granted in a June 9, 2016 decision and order (June 2016 Order).

Background

The Parties' Dispute

The Synod claims that, by a January 19, 2016 resolution, it dissolved St. Paul's and, consequently, it has vested control over the administration of St. Paul's real and personal property, including the church property at 2801 W. 8th Street in Brooklyn (Church Property). By a January 25, 2014 letter to St. Paul's, the Synod expressed its intention to take control of the Church Property and close down St. Paul's as of February 14, 2016.

St. Paul's, in response, commenced this action against the Synod on February 11, 2016 alleging that it previously terminated its relationship as a member of the Lutheran Church in America and the Synod by a unanimous resolution of its voting members on September 20, 2015, notice of which was provided to the Synod. Thus, St. Paul contends that it resigned its membership in the Lutheran Church before the Synod could dissolve it.

St. Paul's Motion For A Preliminary Injunction

St. Paul's contemporaneously moved, by order to show cause, to enjoin and restrain the Synod from interfering with or otherwise prohibiting St Paul's from conducting church services and activities, including prayer services, at the Church Property, and from controlling, managing, operating and/or administering St. Paul's real and personal property. A temporary restraining order (TRO) was issued to maintain the status quo pending the hearing and determination of St. Paul's injunction motion.

The Synod, according to St. Paul's, lacks authority to dissolve it because it previously terminated its affiliation with the Lutheran Church, pursuant to New York State Religious Corporations Law § 17-c. St. Paul's submitted an affidavit from Anna Haye, its member and the Church Council President, who attested that St. Paul's was incorporated in 1908 and has been the record title owner of the Church Property, pursuant to a January 22, 1964 deed. St.

Paul's contended that it demonstrated a likelihood of success on the merits because it owns the Church Property, and the Synod has not been granted any interest therein.

According to Haye, St. Paul's was an affiliate of the Lutheran Church until a September 20, 2015 special meeting at which 16 members of St. Paul's unanimously voted to terminate St. Paul's relationship with the Synod and the Lutheran Church "because St. Paul's had become discontent[ed] with the direction of the Synod's doctrine." St. Paul's, by an October 15, 2015 letter, provided Bishop Robert Rimbo of the Synod with written notification of its unanimous resolution to resign from the Lutheran Church.

Shortly thereafter, St. Paul's received a January 25, 2016 letter from Maria Del Toro, Vice President of the Synod, advising St. Paul's that the Synod voted to impose synodical administration at St. Paul's:

"[O]n January 19, 2016, pursuant to section 13.24 of the Constitution of the Metropolitan New York Synod . . . the Synod Council, voted to impose synodical administration at St. Paul's . . . This means that the Synod will take charge and control of the real and personal property of St. Paul's to hold, manage and convey the same on behalf of this Synod. . . .

"Pursuant to the Synod's Strategic Plan, as adopted at the May 2012 Synod Assembly, the Gathered Strategy Committee's charge includes recommending congregations be brought under synodical administration. Using the Congregational Viability Norms (which were adopted at the May 2011 Synod Assembly) as its decision-making basis[,] the committee initially noted at its January 2013 meeting that the congregation of St. Paul's had completed its ministry and should be considered for synodical administration. [The Committee's] evaluation and decision was reaffirmed at its May 2015 meeting. An Advisory Panel was appointed to meet with Pastor von Harten and members of the congregation by Bishop Rimbo. The congregation refused to engage the Advisory Panel. The recommendation to impose synod administration at St. Paul's was ultimately referred to the Synod Council for its consideration and action."

In the letter, the Synod described the process by which St. Paul's could appeal the Synod's determination to impose synodical administration:

"A copy of the Resolution of the Synod Council is enclosed. The congregation has the right to appeal the decision to the Synod Assembly. The appeal process begins with a properly called and convened congregational meeting, within 45 days of the date of this letter, and at which a representative of the Office of the Bishop is present with voice. The congregation by majority vote may contest one or more provisions of the synod council action. If a motion to contest a provision is adopted by a majority of those present and voting, a quorum being present, the congregation shall notify the Office of the Bishop in writing of the specifics of their appeal and the resolution processes appropriate to § 17.11 shall be followed. The final arbiter of the § 17.11 process shall be the Synod Assembly.

"The § 17.11 process, as referenced in the above and applied in this circumstance, works as follows:

To resolve this appeal, the congregation shall have access to the synodical bishop for consultation. If the consultation fails to resolve the issue(s), the Consultation Committee of this synod shall consider the matter. If the Consultation Committee of this synod shall fail to resolve the issue(s), the matter shall be referred to the Synod Assembly, whose decision shall be final."

The Synod, in opposition, submitted an attorney affirmation claiming that review of "the ecclesiastic determination of the regional expression of a national church body" is a nonjusticiable matter and "this court lacks jurisdiction to review an ecclesiastic proceeding and determination." The Synod asserted that St. Paul's exclusive remedy was an appeal to the Synod Assembly.

The Synod explained that its decision to impose synodical administration at St. Paul's was made pursuant to § 13.24 of its constitution and organic documents, which provide that "if it is the opinion of the Synod Council that the membership of a congregation has become so scattered or so diminished in numbers as to make it impractical for that congregation to fulfill the purposes for which it was organized, the Synod Council may take charge and control of the property of the congregation to hold, manage and convey. . . ." The Synod also

noted that St. Paul's did not effectively terminate its relationship with the Lutheran Church because it: (1) failed to follow the procedure set forth in the Synod's constitution, its organic documents and the New York Religious Corporations Law § 17-c, and (2) failed to obtain the requisite synodical approval.

St. Paul's, in reply, challenged the Synod's standing to impose synodical administration at St. Paul's. St. Paul's asserted that "[r]eview of publicly filed corporate records raises serious question[s] about Defendant's contention that it has authority to take any action, let alone close down and take St. Paul's assets . . ." St. Paul's submitted a copy of its constitution, revised in July 1969, Article III of which provides:

"Section 1. This organization is and shall remain a member of the *Metropolitan New York Synod* (2) a constituent synod of the Lutheran Church in America, or its successor, unless dismissed by it to another constituent synod of the (1) Lutheran Church in America, or to a church body participating in the National Lutheran Council" (emphasis added).

St. Paul's contended, on reply, that the defendant Synod may not be the same entity as the "Metropolitan New York Synod" specifically named in its constitution.

St. Paul's reply annexed a copy of the Synod's 1994 filing with the New York Department of State Division of Corporations, which seemingly revealed that the Synod was formed on April 11, 1994. St. Paul's argued that "Defendant cannot be the Synod [that] Plaintiff St. Paul's is a member of as listed twenty five (25) years earlier when St. Paul's [c]onstitution was ratified in 1969." St. Paul's reply asserted that it could not be disfranchised without "a review of the enabling documents and understanding of the legal nexus of the Parent Church and satellite franchise congregations."

This Court's June 2016 Order

In the June 2016 Order, this court granted St. Paul's motion for a preliminary injunction holding that it "raised an issue as to the appropriate governing body of the

Lutheran Church and accordingly [it] should have an opportunity to discover the corporate Church documents.” A TRO was continued to maintain the status quo, prohibiting the Synod from interfering with St. Paul’s operations and precluding St. Paul’s from entering into any sales contract, mortgages or encumbrances regarding the Church Property.

The Synod’s Instant Motion

The Synod now seeks renewal and reargument of St. Paul’s motion for a preliminary injunction based on the fact that “plaintiff e-filed [its] reply one day before the return date [of its preliminary injunction motion], producing incomplete and misleading documents and raising arguments based on those incomplete documents which, at best, were invalid”¹ The Synod contends that it “had no opportunity to produce the complete documents necessary to establish the absolute lack of merit[] of plaintiff’s argument”² regarding the Synod’s alleged lack of standing to impose synodical administration at St. Paul’s.² Essentially, the Synod seeks renewal and reargument to demonstrate that St. Paul’s assertion regarding the Synod’s lack of authority to impose synodical administration based on the Synod’s 1994 filing with the New York Department of State is factually incorrect.

The Synod submits only an attorney affirmation to clarify that the Synod was first formed by an October 16, 1987 certificate of incorporation, after which it merged with the “Metropolitan New York Synod of The Lutheran Church in America” in 1988, with the Synod being the surviving corporation. According to defense counsel, the Synod’s 1994 filing with the New York Department of State was the Synod’s first filing after the merger.

¹ See ¶ 2 of the July 20, 2016 affirmation of Joseph Milano, Esq., submitted in support of defendant’s motion (Milano Affirmation).

² Milano Affirmation at ¶ 2.

The Synod submits a copy of a January 12, 1988 order, pursuant to which the court approved the Plan of Merger between the two entities, amongst other documents, none of which mention the “Metropolitan New York Synod” expressly referenced in St. Paul’s constitution.

In addition, the Synod reiterates the legal argument that St. Paul’s “exclusive remedy is an appeal to the Synod Assembly” rather than “embroil this civil court in an impermissible and offensive foray into the sacred territory of ecclesiastic decision making.”³ The Synod also reiterates that “synodical administration is an ecclesiastic process recognized and respected by the courts of the State of New York as not reviewable by those civil courts.”⁴

St. Paul’s, in opposition, argues that the Synod’s attempt to establish its authority to impose synodical administration over St. Paul’s was “made by counsel, with no personal knowledge of the facts relating to Plaintiff or Defendant . . .”⁵ St. Paul’s further contends that “[t]he unsubstantiated attorney affirmation and documents proffered by Defendant . . . do not evidence that the 1988 merger involved the synod named in the constitution of Plaintiff St. Paul’s” and therefore “does nothing to dispel the question surrounding the relationship between the Plaintiff Church and Defendant.”⁶

The Synod, in reply, asserts that St. Paul’s “acknowledges that it was a member of the Evangelical Lutheran Church in America . . . and the Metropolitan New York Synod of the Evangelical Lutheran Church in America . . .” in its verified complaint.⁷ The Synod further notes that St. Paul’s moving papers in support of its injunction motion raised the fact that St.

³ *Id.* at ¶ 26.

⁴ *Id.* at ¶ 27.

⁵ *See* ¶ 15 of the November 25, 2016 affirmation of Israel Goldberg, Esq., submitted in opposition to the Synod’s motion (Goldberg Opposition Affirmation).

⁶ Goldberg Opposition Affirmation at ¶¶ 16-18.

⁷ *See* ¶ 3 of the November 29, 2016 reply affirmation of Joseph Milano, Esq., submitted in further support of the Synod’s motion (Milano Reply Affirmation).

Paul's attempted to terminate its relationship with the Synod. The Synod thus asserts that St. Paul's claim that it may not be affiliated with the Synod "is contrary to the allegations in the complaint and counsel's previous affirmations."⁸

Discussion

(1)

Motion For Leave To Renew

A motion pursuant to CPLR 2221 for leave to renew "must (1) be based upon new facts not offered on the prior motion that would change the prior determination, and (2) set forth a reasonable justification for the failure to present such facts on the prior motion" (*Matter of Nelson v Allstate Ins. Co.*, 73 AD3d 929, 929 [2010]). "The requirement that a motion for renewal be based on new facts is a flexible one, and it is within the court's discretion to grant renewal upon facts known to the moving party at the time of the original motion "if the movant offers a reasonable excuse for the failure to present those facts on the prior motion"' (*Gonzalez v Vigo Constr. Corp.*, 69 AD3d 565, 566 [2010], quoting *Matter of Surdo v Levittown Pub. School Dist.*, 41 AD3d 486, 486 [2007]).

"Although a court has the discretion to grant renewal upon facts known to the movant at the time of the original motion, a motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation" (*Huma v Patel*, 68 AD3d 821, 822 [2009] [citations and internal quotation marks omitted] see *Doviak v Finkelstein & Partners, LLP*, 90 AD3d 696, 700-701 [2011]). Thus, the Second Department has admonished that "[w]hile a court has discretion to entertain a renewal motion based on facts known to the movant at the time that the original motion was made, the movant must set forth a reasonable justification for the failure to submit that

⁸ Milano Reply Affirmation at ¶ 5.

information in the first instance” (*United Med. Assoc., PLLC v Seneca Ins. Co.*, 125 AD3d 959 [2015]; *see also Dervisevic v Dervisevic*, 89 AD3d 785, 786 [2011] [holding that for renewal, “a ‘reasonable justification’ for the failure to present such facts on the original motion must be presented”]).

Here, the Synod seeks renewal based, in part, on the court order that approved the Synod’s 1988 merger with “Metropolitan New York Synod of The Lutheran Church In America.” Although the Synod relies on documentary evidence that was available to it at the time that St. Paul’s injunction motion was originally filed, St. Paul’s did not raise the issue of the Synod’s standing and authority to impose synodical administration until it submitted its reply papers one day before the return date of St. Paul’s motion for a preliminary injunction. Under these circumstances, the Synod has offered a reasonable excuse for not including that documentation with its original opposition papers, and therefore, leave to renew is warranted (*see Schenectady Steel Co., Inc. v Meyer Contracting Corp.*, 73 AD3d 1013, 1015-1016 [2010] [holding that new issue raised for the first time on reply in underlying motion was a reasonable excuse why opposing party failed to include evidence with its original opposition papers]).

Upon renewal, the court adheres to its original determination that issues of fact exist regarding the appropriate governing body of the Lutheran Church. The Synod failed to adequately address the factual issue of its authority to impose synodical administration at St. Paul’s by submitting an attorney affirmation which is not based on personal knowledge. Furthermore, the documentary evidence submitted by defense counsel does not relate to or mention the “Metropolitan New York Synod,” which is the entity expressly referenced in St. Paul’s constitution. The Synod only clarifies its relationship with the “Metropolitan New York Synod of The Lutheran Church in America,” with which the Synod merged in 1988.

As previously ordered, St. Paul's is entitled to conduct discovery regarding the relationship between the Synod and the "Metropolitan New York Synod" expressly referenced in St. Paul's constitution.

(2)

Motion For Leave To Reargue

CPLR 2221 (d) (2) expressly provides that a motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." A motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented (*see Haque v Daddazio*, 84 AD3d 940, 942 [2011]; *Mazinov v Rella*, 79 AD3d 979, 980 [2010]; *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1992]). "Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision" (*Matter of New York Cent. Mut. Ins. Co. v Davalos*, 39 AD3d 654, 655 [2007]; *see also Weiss v Fire Extinguisher Svcs. Co.*, 83 AD3d 822, 823 [2011]).

The Synod has failed to establish any basis upon which leave to reargue should be granted. While the Synod contends that its determination to impose synodical administration at St. Paul's is not subject to judicial review, as a matter of law, this court did not yet reach that legal issue. In the underlying decision, this court only determined that a factual issue was raised regarding the Synod's authority over St. Paul's and, consequently, St. Paul's was entitled to have an opportunity to conduct discovery regarding the corporate Church documents proving the relationship between St. Paul's and the Synod. Accordingly, it is

ORDERED that the branch of the Synod's motion for leave to renew St. Paul's motion for a preliminary injunction is granted; and it is further

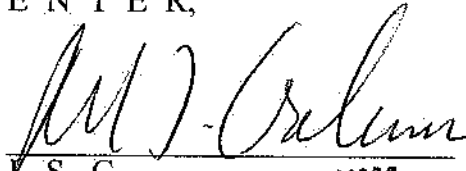
ORDERED that, upon renewal, St. Paul's underlying motion for a preliminary injunction is granted; and it is further

ORDERED that the branch of New York Synod's motion seeking leave to reargue St. Paul's motion for a preliminary injunction is denied; and it is further

ORDERED that the Synod shall serve its answer to the complaint within 30 days after service of this decision and order with notice of entry.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.
HON. BERNARD J. GRAHAM