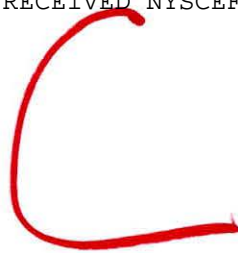


Second Prince of Peace Baptist Church v Haygood
2019 NY Slip Op 32102(U)
May 3, 2019
Supreme Court, Bronx County
Docket Number: 27928/2018E
Judge: Robert T. Johnson
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.



**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 12**

SECOND PRINCE OF PEACE BAPTIST CHURCH.,

Plaintiff,

Index No. 27928/2018E

-against-

**DARLENE S. HAYGOOD a/k/a DARLENE STOVALLI
and ERNEST BROWN**

Defendants.

The following papers, numbered 1-4 were considered on the Order to Show Cause:

<u>PAPERS</u>	<u>NUMBERED</u>
Affirmation in Support of Order to Show Cause and Exhibits	1
Notice of Cross Motion, Affirmation in Opposition and Exhibits.....	2
Reply Affirmation in Further Support, Affidavits and Exhibits.....	3
Sur-Reply Affidavit and Exhibits.....	4

Upon the foregoing papers, this Order to Show Cause is decided as follows:

Plaintiff initiated this action by way of Summons and Complaint on July 9, 2018. The relief sought includes: Finding that Defendants, Rev. Darlene Haygood and her husband, Ernest Brown, are liable for nuisance; Finding that Defendants have and continue to trespass on Plaintiff's property; and Finding that Defendants have engaged in conversion of Plaintiff's property. They also seek Findings: Permanently enjoining Defendants from: (i) communicating with the Plaintiff and its members in any manner, through any person or medium, with regard to the Church, its affairs and business, and the house of worship; (ii) being present at or near the premises where the house of worship is located; and (iii) interfering, intimidating, or harassing Plaintiff's church members from peaceably worshipping at Plaintiff's house of worship located at 464 East 183rd Street, Bronx, NY 10458; and Awarding Plaintiff actual damages as a result of Defendants' willful actions in depriving Plaintiff enjoyment to use and occupancy of the house of

worship; and Awarding Plaintiff costs of this Action, including reasonable attorneys' fees as a result of Defendants' willful actions in depriving Plaintiff its enjoyment to use and occupancy of the house of worship; Pre-judgment interest; and Post-judgment interest.

Plaintiff, now, moves by Order to Show Cause pursuant to CPLR §6301 for a Temporary Restraining Order 1) enjoining Defendants from: a) interfering, intimidating, or harassing Plaintiff's Church members from peaceably worshipping at Plaintiff's house of worship at 464 East 183rd Street, Bronx, NY 10458; b) changing the locks to the church premises owned by the Plaintiff; and c) being present at the house of worship owned by the Plaintiff, and 2) ordering defendants to stay away from the Church's house of worship located at 464 East 183rd Street, Bronx, NY 10458.

On November 18, 2017 Reverend Prince A. Davis, the Pastor, President and Chairman of the Board of Trustees of Second Prince of Peace Church died. Reverend Davis was also the father or step-father of Defendant Haygood¹. The church had been organized under Article 7 of the New York Religious Corporations Law around 1971 and, Rev. Davis had held those positions since the inception.

Plaintiff submits an attorney affidavit, affidavits from Rev. James Judge, Deborah Freeman, James Holly, Darlene House, Arlene Taylor, Joy Julye, Martin Taylor and Fernanda Morales. Among their allegations is that Rev. Judge is the successor Pastor, Trustee of the Board, and President. They further submit that Joy Julye and Roberta Fowler are also Trustees. Plaintiff attached four exhibits: 1) A copy of an Article 7 Certificate of Incorporation for Second Prince of Peace Baptist Church Inc., dated November 18, 1971. It is signed by Rev. Davis and six Trustees, who are not otherwise mentioned in either party's papers. 2) A copy of a July 11,

¹ Plaintiff refers to Rev. Haygood as a step-daughter, while Rev. Haygood indicates that she is the daughter of Rev. Davis and Annie Davis.

1991 Certificate of Amendment of The Certificate of Incorporation of The Second Prince of Peace Baptist Church Inc. reporting the results of a July 5, 1991 election. It too is signed by Rev. Davis. It also bears the signatures of the elected Trustees and Officers: James Judge – Trustee and Chairman Board of Deacons, Prince A. Davis President – Chairman Board of Trustees, Annie Davis – trustee, Shirley Judge-Secretary, Sarah Allen-Trustee and, Rev. Prince A. Davis-Treasurer. 3) Another Certificate of Amendment dated April 13, 2018 and, reports the results of a March 31, 2018 meeting. This election and certificate change the Trustees to Rev. James Judge, Joy Julye and Roberta Fowler and 4), The November 15, 1984 deed for the purchase of 464 East 183rd Street, Bronx, NY 1058 by Second Prince of Peace Baptist Church Inc. The first three of these certificates have been certified by The Bronx County Clerk. The fourth exhibit bears copy a of the seal of The City Register of Bronx County.

The affidavits submitted by Plaintiff are, in many ways, identical. They differ as to the affiants' ages and times of membership. They all allege "bullying", "threats", and "harassment" on the part of the Defendants. Although a number of the affiants claim to have had these actions directed at them; each of the affidavits lacks, for the most part, specificity as to the actions taken and the time and place of occurrence. Allegations that Plaintiff was locked out of the church by Defendants and that the police declined to get involved are, likewise, made without specificity or a direct statement of observation. Mssrs. Holly and M. Taylor and Mss. House, A. Taylor, Julye and Morales do attest to an incident during a Sunday School service in which Rev. Gatlin, "the pastor," was threatened. They, in identical paragraphs, describe the precise language without saying that they witnessed the incident. Ms. Freeman does describe Rev. Haygood, on May 10, 2018, pushing her and striking her with a chair. Rev. Judge refers to this incident but, he does not say that he witnessed it.

Defendants cross-move for an order dismissing the complaint pursuant to CPLR 3211(a)(1), 3211(a)(3), and 3211(a)(7) and opposes the order to show cause.

In Opposition, Defendants offer an attorney's affirmation and, the joint affidavit of Defendants Haygood and Brown along with affidavits from Annie Davis, Nyeja Winns, Veronica Benton, Gloria Armstrong, LaJoya Haygood, Ebony Fort, Joan Jackson, Raniesha Lessington, Inez Fort, Darnell Haygood, Patsy Jackson and Latesha Haygood. Defendants deny ever bullying or harassing anyone and, they deny physically assaulting anyone. In their joint affidavit a section regarding the dates of membership in the Church is left blank. Among the other affidavits submitted, which are uniform in format with some blanks to be filled in, Ms. Davis indicates the *longest connection* to the Church, since 1971. She also averred that she and Rev. Judge are the only Trustees of the Church, and, as a member and Trustee in 2018, she received no notice of the March meeting. Darnel Haygood attests to 25 years of membership. LaJoya Haygood indicates a 24-year membership, rejoining in 2018. Latesha Haygood indicates a 30 plus year membership, rejoining in 2018. The remainder of the affidavits attest to memberships that began in 2018.

Defendants' primary objections are to the lack of notice and method of selecting the alleged new Trustees. Specifically, defendants argue failure to comply with the requirements of Business Corporation Law §§ 133 – 139, and Religious Corporation Law Article 7. They point to Ms. Davis' affidavit as evidence of the fact that notice was not given prior to the March 2018 meeting.

In Further Support, Plaintiff first seeks rejection of Defendants' Opposition as being submitted one day past the Stipulated date of August 13, 2018. Plaintiff then goes on, by an attorney affirmation and the affidavit of Shirley Judge, to refute substantive issues. Ms. Judge

Avers that: she has been a member for 39 years, she has been secretary and clerk since at least 1991 and keeps the membership records of the Church, and that Ms. Davis has not been a member for 4 years (as she is suffering from health issues, including Alzheimer's dementia)² Plaintiff's counsel referring to Ms. Judge's affidavit, argues that all members were served. In actuality, Ms. Judge indicated that "every member who submitted an affidavit" in support of the application voted and is "an active member in good standing." She did not allege that all members had voted nor, did she say that notices had been sent.

In their reply, Defendants once again by way of a joint affidavit. Most notably, in their Opposition and reply affidavits Defendants make no claim of pastorship or authority within the Church. Their arguments are confined to negating the contentions of the Plaintiff, alleging that Ms. Davis is a Trustee and, claims that Rev. Haygood had made attempts to maintain the church and clear up tax and insurance problems.

Initially, the court has the discretion to consider the opposition papers which were submitted one day late by Defendants provided the movant is afforded time to submit reply papers (*Kavakis v Total Care Systems*, 209 AD2d 480 [2d Dept 1994]). Whereas here, Plaintiff has not demonstrated that it would suffer any prejudice, and Plaintiff was permitted to submit reply papers, the court will consider Defendants' cross-motion and opposition (*Dinnocenzo v Jordache Enters.*, 213 AD2d 219 [1st Dept 1995]).

Plaintiff's order to show cause

It is well established that in order to prevail upon a motion for a preliminary injunction, the movant has the burden of demonstrating by clear and convincing evidence that 1) the moving party will succeed on the merits of the action, 2) the moving party will suffer irreparable injury

² An uncertified Doctor's note, dated June 17, 2016 is offered as support.

absent the issuance of a preliminary injunction, and 3) a balancing of equities favors the movant's position (*see* CPLR 6301; *Price Paper & Twine Co. v Miller* 182 AD2d 748 [2nd Dept 1992]; *Karl v Wood*, 137 AD2d 22 [2nd Dept 1988]). Injunctive relief will be afforded only in those extraordinary situations where the plaintiff has no adequate remedy at law and such relief is necessary to avoid irreparable injury (*Chicago Research and Trading v NY Futures Exchange*, 84 AD2d 413, 416 [1st Dept. 1982]). Viewed within this framework, Plaintiff's request for a preliminary injunction is denied.

Here, plaintiff has not demonstrated a likelihood of succeeding on the merits of the case. In order to meet that burden, plaintiff must demonstrate that the right on which it seeks to ultimately prevail "is plain from the undisputed facts [and] [if] the right depends upon an issue which can only be decided upon a trial, the injunction cannot be granted" (*Zurich Depository Corporation v Gilenson*, 121 AD2d 443, 444 [2nd Dept 1986] quoting *Family Affair Haircutters, Inc. v. Detling*, 110 AD2d 745, 747 [2d Dept. 1985]). Plaintiff has alleged its members' longstanding connection to the Church since its inception. On the other hand, Defendants claim that the March 31, 2018 meeting is a nullity since not all the trustees were noticed. Insofar as it is not clear from the undisputed facts that Plaintiff would ultimately prevail, Plaintiff fails to satisfy this prong.

The court finds that Plaintiff has not established that it will suffer irreparable harm unless a preliminary injunction is issued. In the matter at bar, Plaintiff has not shown that it would not have an adequate remedy at law if it is able to demonstrate that defendant violated its rights.

Finally, Plaintiff has not demonstrated that the equities balance in plaintiffs' favor. "In balancing the equities, the court should consider various factors, including the interests of the general public as well as the interests of the parties (*De Pina v Educ. Testing Serv.*, 31 AD2d 744

[2d Dept 1969]). Here, conflicting affidavits tendered by both Plaintiff and Defendants do not demonstrate that the balancing of equities would be in Plaintiff's favor. Consequently, Plaintiff has failed to demonstrate with clear and convincing evidence that it has satisfied the three prong test for granting a preliminary injunction herein and therefore, the injunctive relief requested by Plaintiff must be denied.

Defendants' cross-motion to dismiss

On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*See* CPLR § 3026). The court will "accept the facts as alleged in the complaint as true, accord plaintiff's the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 N.Y.2d 83, 87-88 [1994]). To defeat a motion to dismiss, the opposing party need only assert facts of an evidentiary nature, which "fit within any cognizable legal theory" (*See Bonnie & Co. Fashions v Bankers Trust Co.*, 262 A.D.2d 188, 189 [1st Dept 1999]).

A motion to dismiss under CPLR §3211(a)(1) is granted only if the documentary evidence submitted, "utterly refutes plaintiff's factual allegations" (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]) and "conclusively establishes a defense to the asserted claims as a matter of law" (*Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267, 270-271 [1st Dept 2004]). In order for a document to qualify as documentary evidence, it must be unambiguous, authentic, and undeniable (*Fontanetta v John Doe 1*, 73 AD3d 78 [2d Dept 2010]). Judicial records, and out-of-court transactions including mortgages, deeds, contracts, and other papers, the contents of which are "essentially undeniable" and generally qualify as "documentary evidence" (*Id.*; *see also Bronxville Knolls v Webster Town Ctr. Partnership*, 221 AD2d 248 [1st Dept 1995]). Affidavits, deposition testimony, and letters

are generally not considered to be documentary evidence pursuant to CPLR § 3211 (a) (1) (*See Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431 [1st Dept 2014]; *Morgenthau & Latham v Bank of N.Y. Co.*, 305 AD2d 74 [1st Dept 2003]).

Here, Defendants' "documentary evidence" merely consists of conclusory affidavits. The affidavits fail to do more than "assert the inaccuracy of Plaintiff's allegations" (*Tsimerman v Janoff*, 40 AD3d 242, 242 [1st Dept 2007]) and do not "conclusively dispose" of Plaintiff's claims (*See Fortis Fin. Servs., LLC v Fimat Futures USA, Inc.*, 290 AD2d 383 [1st Dept 2002]). Accordingly, this branch of Defendants' motion is denied.

"On a motion to dismiss the complaint pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Rietschel v Maimonides Med. Ctr.*, 83 AD3d 810 [2d Dept 2011])(internal quotation marks omitted). It is well-settled that a pleading shall be liberally construed and will not be dismissed for insufficiency merely because it is inartistically drawn (*Foley v D'Agostino*, 21 AD2d 60 [1st Dept 1964]). The relevant inquiry is whether the requisite allegations of any valid cause of action cognizable by the state courts can be fairly gathered from the four corners of the complaint (*Id.*). Defendants do not put forth any allegations as to why Plaintiff has failed to state a cause of action for nuisance, trespass, conversion or permanent injunction. Indeed, Defendants fail to even annex a copy of Plaintiff's complaint to their cross-motion. A motion under CPLR 3211(a)(7) addresses only the adequacy of the pleading (*Hendrickson v Philbor Motors, Inc.*, 102 AD3d 251, 255 [2d Dept 2012]). "Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove [his or her] claims,

of course, plays no part in the determination of a prediscovery CPLR 3211 motion to dismiss” (*Shaya B. Pac., LLC v Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 AD3d 34, 38 [2d Dept 2006]). Accordingly, this branch of Defendants’ cross-motion is denied.

A motion made pursuant to CPLR 3211(a)(3) for lack of capacity to sue requires an inquiry into the litigant's status, i.e., its "power to appear and bring its grievance before the court" (*Community Bd 7 of Borough of Manhattan v Schaffer*, 84 NY2d 148, 155 [1994]). Here, Defendants merely assert in conclusory fashion that “Movants cannot and do not speak for the Plaintiff/Baptist Church; hence the Movants cannot bring this action, and lack standing.” Given the conflicting affidavits proffered by Plaintiff and Defendants, the court finds that there are issues of fact regarding the authority to bring this action which preclude dismissal on this ground at this juncture.

Accordingly, it is hereby ORDERED, that Plaintiff’s order to show cause is denied; and it is further

ORDERED, that Defendants’ cross-motion is similarly denied.

Movant is directed to serve a copy of this decision and order with notice of entry within 30 days.

This constitutes the decision and order of this Court.

Dated: May 3, 2019



Robert T. Johnson, J.S.C.