

**Governing Body Commn. of the Intl. Socy. of
Krishna Consciousness v Britten**

2019 NY Slip Op 34900(U)

May 22, 2019

Supreme Court, Kings County

Docket Number: Index No. 524895/2017

Judge: Dawn Jimenez-Salta

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At an IAS Term, Part 88 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 22nd day of May, 2019.

P R E S E N T:

HON. DAWN JIMENEZ-SALTA,
Justice.

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GOVERNING BODY COMMISSION OF THE
INTERNATIONAL SOCIETY OF KRISHNA
CONSCIOUSNESS, WILLIAM TRIPP SUCZEK,
PRAGNESH SURTI, FRANK LENNA, GITA DAS,
TAPAS KUMAR MISTRI, MINAL PATEL, MAHUA
PURAKAIT, DHRUBA SAHA, and BHARATI CENTER,
INC.,

Plaintiffs,

- against -

DAVID BRITTEN, HEATHER BRITTEN, ARTHUR
CUFFEE, ALEXIS CUFFEE, DAVID JONES, GRIGORY
FOOKS, HEMWATTEE SINGH, SHAILA TRIVEDI,
FINDER NOVICK KERRIGAN LLP, and MARK J.
WEINSTEIN,

Defendants.

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DECISION/ORDER

Index No.: 524895/2017

Motion Seq. No. 6

2019 MAY 24 AM 9:04
KINGS COUNTY CLERK
FILED

Recitation, as required by *CPLR 2219(a)*, of the papers considered in the review of:

1) Plaintiffs Governing Body Commission of the International Society of Krishna Consciousness, William Tripp Sucek, Pragnesh Surti, Frank Lenna, Gita Das, Tapas Kumar Mistri, Minal Patel, Mahua Purakait, Dhruba Saha (“Plaintiffs”), and Bharati Center Inc.’s (“Bharati Center”) Partial Motion for Summary Judgment, pursuant to CPLR 3212, for an Order:

(a) compelling Defendants and former directors to turn over any and all books and records in their possession or control;

(b) compelling Defendants to provide a full and complete accounting of all of Bharati Center’s funds, monies, assets and properties and all other expenditures with funds or assets of Bharati Center from January 1, 2014 to present;

(c) permanently enjoining Defendant Mark J. Weinstein, Esq. from acting or holding himself out as counsel for Bharati Center and compelling the him to turn over all legal files and records in his possession relating to Bharati Center;

- (d) entering judgment for money damages against Defendants to include:
 - (i) all legal fees and services paid to Mark J. Weinstein, Esq. and Jose Cotto, Esq. with funds or assets of Bharati Center;
 - (ii) the value of all personal benefits received by Defendants David Britten and Heather Britten directly or indirectly from Bharati Center from January 1, 2014 to present;
 - (iii) the value of items including all merchandise, food, personal property, and equipment of Bharati Center which was allegedly removed from the Bharati Center house of worship under the direction of Defendants from January 1, 2014 to present; and

(e) granting such other and further relief to Plaintiffs as the Court determines to be just and proper; together with accompanying Memorandum of Law, Affidavits, and Statement of Material Facts, dated January 14, 2019;

2) Defendants' Affirmation in Opposition, together with accompanying Affidavits and Memorandum of Law in Opposition, dated January 21, 2019, all of which submitted January 23, 2019.

Papers Considered:

Numbered:

Notice of Motion, Affidavits/Affirmations,
 Memorandum of Law, and Exhibits Annexed

Plaintiffs 1; 2 [Exh. A-F]; 3; 4; 5 [Exh. 1-8]; 6 [Exh. A-Q]; 7 [Exh A-F]; 8 [Exh. 1-3]; 9 [Exh. A]; 10; 11 [Exh. A];

Affidavits/Affirmation in Opposition, Memorandum of Law,
 and Exhibits Annexed

Defendants 12; 13; 14 [Exh. 1-2]; 15; 16.

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows: Plaintiffs' motion for partial summary judgment pursuant to CPLR 3212 on their fifth cause of action is granted. In accordance with the Court's previous order, dated October 29, 2018, Plaintiffs' request for an order directing Defendants to turn over the books and financial records of Bharati Center, and provide an accounting of the income and expenditures of the temple with respect to bank accounts, the temple altar and temple store, and the soup kitchen/café operated on the premises, from the period of January 2014 to present, is also granted.

Consistent with the Court's prior order, Defendants are enjoined from holding themselves out as or acting as the officers, directors or representatives of Bharati Center and from interfering with the current directors' oversight and supervision of Bharati Center.

Plaintiffs' motion for partial summary judgment on their second and third causes of action against defendants David Britten and Heather Britten is denied pending trial or further

evidentiary findings regarding the assets and financial transactions of Bharati Center and alleged removal of temple property.

Plaintiffs' motion for summary judgment on their sixth cause of action is denied.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This action arises out of a dispute between two factions of the International Society for Krishna Consciousness ("ISKCON") over the management and control of the ISKCON Radha Govinda Temple, incorporated as Bharati Center, Inc. ("Bharati Center"), following a proposed sale of its real property and assets [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Plaintiff is the Governing Body Commission, the highest governing body and ecclesiastical authority within ISKCON (also known as the Hare Krishna Movement), a hierarchical religious organization with a core set of beliefs drawn from traditional Hindu scriptures (*see International Soc. for Krishna Consciousness v Barber*, 650 F2d 430, 433 [2d Cir 1981]). The current board of directors of Bharati Center, elected with the support of the GBC, are also plaintiffs. Defendants include former members of the board of directors of Bharati Center, temple president and director David Britten ("Britten"), and attorneys hired on their behalf (collectively, "Defendants"). It was Britten and the former directors who voted to approve the sale of the temple property located at 295-309 Schermerhorn Street in Brooklyn, New York ("Brooklyn Temple") [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

On October 23, 2017, Bharati Center, under the administration of Britten and the former directors, commenced a separate proceeding arising out of the same property dispute under index No. 2855/2017 by the filing of a petition pursuant to N-PCL §§ 510 and 511 and RCL § 12 to obtain judicial approval of the proposed sale of the Brooklyn Temple [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

In a prior decision, dated April 17, 2018, this Court denied approval of the proposed sale, finding that the supporting documentation and objections of the GBC raised serious issues regarding whether the requisite corporate consents and approval of the GBC were obtained and whether the transaction was reasonable and in furtherance of the best interest of the corporation. In so holding, the Court determined that ISKCON is a hierarchical religious organization in which local temples are subject to the laws, rules, and decisions of the GBC (*see Kelley v Garuda*, 57 Misc 3d 1212[A], 2017 NY Slip Op 51393[U], at *16-17 [Sup Ct, Nassau Cty 2017]) [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Shortly after the petition was filed, Plaintiffs commenced the subject action on behalf of Bharati Center, seeking, inter alia, a determination that Plaintiffs are the sole and rightful directors of Bharati Center and injunctive relief prohibiting Defendants from interfering with the current directors' governance of Bharati Center. Plaintiffs also sought an order prohibiting Britten and the former directors from taking any steps to sell the Brooklyn Temple or disaffiliate Bharati Center from ISKCON [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

On June 27, 2018, Plaintiffs moved for summary judgment on their first cause of action for declaratory relief and the fourth cause of action for injunctive relief. Following a review of the language of the pertinent bylaws of Bharati Center, ISKCON rules and regulations, and the documents submitted by the parties, this Court granted Plaintiffs' motion. Due to the fact that ISKCON is a hierarchical organization, the Court found that local Hare Krishna temples, such as Bharati Center, are required to abide by the rules and decisions of the GBC and ISKCON. The Court also found that Britten and the former directors were duly removed by the GBC, and that the current directors were duly named to the board on November 4, 2017 [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

In addition, the Court held that Plaintiffs were entitled to summary judgment on their fourth cause of action for injunctive relief enjoining Defendants from interfering with Plaintiffs' oversight and supervision of Bharati Center. Defendants were also prohibited from holding themselves out as officers or directors of Bharati Center, from acting as signatories on Bharati Center's accounts, and from retaining any of its books or records [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Defendants subsequently moved for leave to renew their arguments in opposition to Plaintiffs' motion for summary judgment, alleging that their attorneys recently obtained new documents regarding the structure and organization of ISKCON that were previously unavailable. This Court denied the motion in an order dated January 31, 2019, finding that Defendants failed to provide new facts or evidence and also failed to provide a reasonable explanation for not presenting the documents at the time of their initial opposition to the motion [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Plaintiffs now move for summary judgment on their remaining causes of action seeking an order compelling the former directors¹ to provide a full and complete accounting of all of Bharati Center's assets and property (including financial transactions authorized by the former directors on behalf of Bharati Center). They also seek to recover damages from David Britten and Heather Britten for alleged personal benefits improperly conferred upon them by the corporation [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Plaintiffs assert that they are entitled to an accounting of the assets and finances of Bharati Center from Defendants premised upon the fiduciary obligations of the former directors and officers along with statutory obligations contained in the Not-for-Profit Corporations Law ("N-PCL") and the Religious Corporations Law ("RCL"). Plaintiffs also note that Defendants allegedly failed turn over the Bharati Center financial records following the Court's previous decision. Specifically, they argue that they are entitled to the books and records of Bharati Center, including those pertaining to the soup kitchen/café and gift shop operated on the premises. Plaintiffs request records detailing payroll, donations, donation receipts, catering income, and business expenses. They also seek information regarding the bank accounts opened on behalf of Bharati Center [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

In addition, Plaintiffs seek summary judgment on their sixth cause of action for injunctive relief enjoining defendant Mark J. Weinstein, Esq. ("Weinstein") from holding himself out as counsel for Bharati Center. In support, they attach the minutes of a special meeting of the current Bharati Center board of directors held on November 4, 2017 in which Weinstein was purportedly dismissed. Plaintiffs claim that Weinstein continues to improperly hold himself out as counsel for Bharati Center [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Lastly, Plaintiffs assert that summary judgment should be entered against defendants David Britten and Heather Britten on their second and third causes of action seeking monetary damages for breach of statutory and fiduciary duties of care and loyalty. Citing RCL § 5, Plaintiffs allege that the former directors and officers failed to administer the funds held by Bharati Center in accordance with the "discipline, rules and usages of the corporation and of the ecclesiastical governing body. . . and with the provisions of law relating thereto"

¹ Plaintiffs seek no relief with respect to defendant Shaila Trivedi, with whom they have settled. A stipulation discontinuing the action as against Trivedi was filed on January 8, 2019 [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

(RCL § 5; *see also* N-PCL § 519). In the affirmation in support, Plaintiffs further assert that both David and Heather Britten improperly received personal financial benefits and failed to document the income or benefits received by the individual defendants. In addition to purportedly utilizing corporate funds and credits cards for personal purchases, it is alleged that David and Heather Britten were living at rooms in the Brooklyn Temple for years without paying rent or other expenses. They allege that no documents evidencing income or benefits received by the individual directors have been produced by Defendants during discovery [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Plaintiffs further allege that they are entitled to recover all payments for legal fees and services made directly or indirectly to Weinstein and his attorney, Jose Cotto, Esq. [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

In support, Plaintiffs attached the affidavits of Tapas Kumar Mistri (current board member of Bharati Center and accountant with a masters degree in accounting and financial management) and Cody Breunig (computer forensic examiner) setting forth allegations regarding improper use of Bharati Center funds and suspicious transactions indicative of “self-dealing and/or defalcations.” Mistri indicates that the GBC requested that he review certain financial records of Bharati Center obtained directly from Chase Bank, Citibank, and American Express by means of subpoena. These records cover the period from December 2010 to November 2018. Based upon his review of the bank statements, which show various withdrawals and deposits from the three different savings accounts, Mistri concluded that the former directors failed to ensure that Bharati Center’s assets were administered in accordance with the corporate bylaws, the GBC rules and regulations, and the pertinent statutory authorities such as N-PCL § 519. He also observed that the statements show that there were a number of transactions with unknown persons and cash withdrawals of varying amounts for undisclosed reasons made by Heather Britten. Mistri further notes that the former directors and officers failed to make or turn over any annual financial reports or accounting since at least 2008 [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

In response to Plaintiffs’ request for an order compelling Defendants to turn over the books and records of Bharati Center, Defendants assert that their former attorneys, Finder Novick Kerrigan LLP (“Finder Novick”),² previously exchanged over 900 pages of

² Finder Novick Kerrigan LLP represented Britten, Heather Britten, Arthur Cuffee, Alexis Cuffee, David Jones, Grigory Fooks, Hemwatee Singh, and Shaila Trived (as individual defendants) and was also

documents related to the operation and finances of Bharati Center in June 2018 [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Defendants also reject Plaintiffs' argument that they are entitled to damages arising from legal services provided by Weinstein on the ground that Weinstein was properly retained by the former directors prior to their purported removal. Cotto further asserts that Plaintiffs failed to establish that the filing of the sale petition under index No. 2855/2017 constituted waste of Bharati Center assets or that it was made in bad faith. Weinstein and Cotto argue that Plaintiffs fail to establish as a matter of law that any of the allegations in the complaint against Weinstein or the individual directors and officers constitute corporate waste or conversion. Assuming that the transactions did in fact occur, Defendants argue that Plaintiffs' allegations are subject to trial on the merits wherein witnesses and documents can be examined. In support, Defendants attach affidavits from Heather Britten and Weinstein, in which they deny any self-dealing or improper use of Bharati Center funds and assert that all the corporate documents in their possession were previously exchanged³ [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

An affidavit from David Britten is also attached to Defendants' opposition. In his affidavit, Britten denies Plaintiffs' claims that he removed, stole, or damaged Bharati Center property or records. Regarding the temple gift shop, Britten states that he purchased the shop personally from another congregant, Charles Henderson, in May 1989. A bill of sale and certificate of authority purporting to evidence the transaction is attached. Both documents indicate that the buyer was "Ramabhadra Das, aka David Britten." The bill of sale provides that "[t]he signing of a lease with Bharati Center, Inc. for the boutique space shall be the responsibility of the Buyer." Neither the affidavit nor the attached documents indicate whether a lease was negotiated with Bharati Center [Plaintiffs 1; Plaintiffs 2, Exh. A-F;

named as a defendant in this action. The former directors previously retained Finder Novick as general counsel of Bharati Center in January 2017. The parties executed a stipulation discontinuing the action against Finder Novick on January 29, 2019 [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

³ Though Finder Novick submitted copies of invoices and billing statements detailing the legal services provided to Bharati Center and the individual defendants, these documents do not include information regarding the legal services provided by Weinstein [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Britten and Heather Britten claim that they also personally own the soup kitchen/café located in the Brooklyn Temple but no documentation was provided to the Court [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

DISCUSSION

Standard of Review

Summary judgment is a drastic remedy and should be granted only when it is clear that no triable issues of fact exist (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). The moving party bears the burden of demonstrating its *prima facie* entitlement to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any material issue of fact (*see* CPLR 3212 [b]; *Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]). Failing to make that showing requires denying the motion, regardless of the adequacy of the opposing papers (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 502 [2012]; *Ayotte v Gervasio*, 81 NY2d 1062, 1062 [1993]). Making a *prima facie* showing then shifts the burden to the opposing party to produce sufficient evidentiary proof to establish the existence of material factual issues (*see Alvarez*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Accordingly, issue-finding rather than issue-determination is the key in deciding a summary judgment motion (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, [1957], *rearg denied* 3 NY2d 941 [1957]). “The court’s function on a motion for summary judgment is to determine whether material factual issues exist, not resolve such issues” (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks omitted]).

Analysis

As set forth above, this Court previously granted summary judgment in favor of Plaintiffs on their first and fourth causes of action in the complaint, determining that the current directors of Bharati Center elected with the support of the GBC are the duly elected members of the Bharati Center board of directors. Britten and the former directors were also enjoined from interfering with the current directors’ oversight and supervision of Bharati Center. The same order prohibited the former directors from retaining any books or records of Bharati Center [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh.

A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Consistent with the Court's prior order, Defendants are enjoined from holding themselves out as or acting as the officers, directors or representatives of Bharati Center or interfering with the current directors' oversight and supervision of the operation of Bharati Center. The former directors are also prohibited from acting as signatories on Bharati Center's accounts. The granting of injunctive relief enjoining the former directors from retaining the books and financial records, including documents regarding the assets, liabilities, revenue and receipts of Bharati Center, naturally follows this Court's findings [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Plaintiffs' motion for summary judgment on their fifth cause of action for an accounting as to the assets, liabilities, revenues, and receipts of Bharati Center is also granted [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

The right to an accounting arises out of a fiduciary or trust relationship and a duty upon the part of the defendant to account for the losses and profits of an entity or corporation (*see Pacella v RSA Consultants, Inc.*, 164 AD3d 806, 808 [2d Dept 2018]; *Benedict v Whitman Breed Abbot & Morgan*, 110 AD3d 935, 937-938 [2d Dept 2013]; *see also* 1 NY Jur 2d, Accounts and Accounting § 33). To prevail on a cause of action for an accounting, a party must show that he or she demanded an accounting and that the demand was refused, or that such demand would have been futile (*World Ambulette Transp. v Kwan Haeng Lee*, 161 AD3d 1028, 1032, [2d Dept 2018]); *Walsh v Wwebnet, Inc.*, 116 AD3d 845, 846-848 [2d Dept 2014]). Where "there is a fiduciary relationship between the parties, there is an absolute right to an accounting notwithstanding the existence of an adequate remedy at law" (*Webster v Forest Hills Care Ctr., LLC*, 164 AD3d 1499, 1501, [2d Dept 2018]; *Koppel v Wien, Lane & Malkin*, 125 AD2d 230, 234 [1st Dept 1986]).

Initially, the Court notes that the allegations and papers of both Plaintiffs and Defendants establish the existence of a fiduciary relationship between the former directors and Bharati Center. Plaintiffs also allege that they previously demanded an accounting from Defendants regarding the funds, assets, and property of Bharati Center. In support, Plaintiffs attach documents evidencing their previous requests, including correspondence sent to Defendants' attorneys from the GBC [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs

11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

To the extent that this cause of action seeks an accounting, Defendants do not dispute that Plaintiffs demanded an accounting. Rather, Defendants assert that the cause of action is moot on the ground that Plaintiffs are in receipt of the requested documentation. Defendants, however, do not admit or deny that they have complied with the Plaintiffs' request for an accounting [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

A review of the exhibits and documents referenced by the parties establishes that an accounting was not conducted. Though it is clear that there are disputes regarding discovery, since Plaintiffs pursue an accounting to determine the amount of damages and obtain further information regarding the finances of Bharati Center during the time that it was under the stewardship of the former directors (*see Webster v Forest Hills Care Ctr., LLC*, 164 AD3d at 1501, citing *Lex Tenants Corp. v Gramercy N. Assoc.*, 284 AD3d 278, 278 [1st Dept 2001]), Plaintiffs are entitled to an accounting of the income and expenses of Bharati Center (including insurance costs, taxes, rents, and maintenance) from January 1, 2014 to present [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Plaintiffs' request for an order enjoining Weinstein from acting or holding himself out as counsel for Bharati Center is denied. Weinstein's affidavit, dated December 6, 2018, indicates that he does not claim to currently represent Bharati Center. A review of his notice of appearance, which was filed on September 28, 2018, states that he was retained to represent the individual defendants/former directors— David Britten, Heather Britten, Arthur Cuffee, Alexis Cuffee, David Jones, Grigory Fooks, Hemwatee Singh, and Shaila Trivedi. Based upon his submissions to the Court, Weinstein does not appear to hold himself out as counsel for Bharati Center [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Plaintiffs' motion for summary judgment on the second and third causes of action against David Britten and Heather Britten for money damages is denied on the ground that triable issues of fact exist as to whether these two defendants breached their fiduciary duty to Bharati Center. Additionally, due to the factual issues regarding financial benefits received by the directors and lack of specific information regarding withdrawals from the Bharati Center accounts detailed in the subpoenaed bank records, the Court cannot determine the amount of damages at this time [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh.

A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

In addition, despite repeated claims that David Britten and Heather Britten improperly received personal benefits from Bharati Center, Defendants fail to identify specific instances of objectionable conduct or improper use of Bharati Center funds. While the affidavits submitted in support of Plaintiffs' summary judgment motion indicate that a review of financial records revealed instances of potentially suspicious transactions, Plaintiffs again fail to provide specific, identifiable instances of improper conduct sufficient to demonstrate that they are entitled to judgment as a matter of law on their second and third causes of action for money damages against David and Heather Britten [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

Plaintiffs' claim that Defendants' affidavits and testimony are self-serving is not a sufficient basis to grant their motion for summary judgment or to disregard David Britten and Heather Britten's claims regarding their personal ownership of certain property in the Brooklyn Temple. The Court cannot make that type of credibility finding on a motion for summary judgment under these circumstances [Plaintiffs 1; Plaintiffs 2, Exh. A-F; Plaintiffs 3; Plaintiffs 4; Plaintiffs 5, Exh. 1-8; Plaintiffs 6, Exh. A-Q; Plaintiffs 7, Exh. A-F; Plaintiffs 8, Exh. 1-3; Plaintiffs 9, Exh. A; Plaintiffs 10; Plaintiffs 11, Exh A; Defendants 12; Defendants 13; Defendants 14, Exh. 1-2; Defendants 15; Defendants 16].

CONCLUSION

In light of the foregoing, Plaintiffs have established that they are entitled to judgment as a matter of law on their fifth cause of action for an accounting against the former directors.

As previously set forth, Plaintiffs' motion for an order requiring that Defendants turn over the books and financial records of Bharati Center (along with any keys or passwords necessary to obtain the documentation and records), and an accounting of the income and expenditures of Bharati Center from January 2014 to present is also granted. The records and documents turned over should include any passcodes or passwords necessary to obtain digital information stored on computers and access e-mail accounts belonging to Bharati Center used for purposes of storing the corporation's financial information. The accounting must include an inventory along with receipts and bills of sale in the possession of Defendants for items purchased and/or sold on behalf of Bharati Center, including items removed from the Brooklyn Temple during the pendency of this action.

The accounting must also include financial records related to the temple altar (including any information regarding temple donations in the possession of Defendants), temple gift store, Bharati Center bank accounts, and the soup kitchen/café operated on the premises of the Brooklyn Temple.

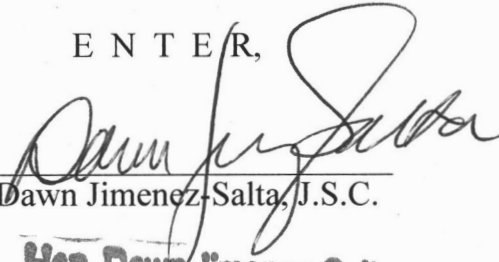
Plaintiffs' motion for partial summary judgment on their second, third, and sixth causes of action is denied.

This constitutes the Decision/Order and Judgment of the Court.

Dated: May 22, 2019
Brooklyn, NY

Governing Body Commission of the International Society of Krishna Consciousness et al.
v David Britten et al.
Index No. 524895/2017

E N T E R,



Dawn Jimenez-Salta, J.S.C.

Hon. Dawn Jimenez-Salta

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