

**Matter of Metropolitan N.Y. Synod of the  
Evangelical Lutheran Church in Am. v Berg**

2020 NY Slip Op 32238(U)

July 10, 2020

Supreme Court, New York County

Docket Number: 156485/2018

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. DEBRA A. JAMES**

**PART IAS MOTION 59EFM**

*Justice*

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**INDEX NO. 156485/2018**

In the Matter of the Application of

**MOTION DATE 03/12/2019**

METROPOLITAN NEW YORK SYNOD of the  
EVANGELICAL LUTHERAN CHURCH in AMERICA,  
individually and as administrator of the property of the  
Kingsbridge Evangelical Lutheran Church,

**MOTION SEQ. NO. 001**

Petitioner,

For leave to transfer certain real property of  
KINGSBRIDGE EVANGELICAL LUTHERAN CHURCH,  
Pursuant to Section 12 of the Religious Corporations Law,

**DECISION + ORDER ON  
MOTION**

- v -

LLOYD BERG, JOHN LININS also known as JOHN LINNIS,  
individually and as officers and members of the  
Congregation Council of Kingsbridge Evangelical Lutheran  
Church, and JOHN DOE 1 through 5, and JANE DOE 1  
through 5,

Respondents.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 16, 17, 18, 19,  
20, 21, 28, 29, 30, 31

were read on this motion for JUDGMENT - DECLARATORY

ORDER

Upon the foregoing documents, it is

ORDERED that the branch of petitioner's motion that seeks a  
summary declaratory judgment with respect to the subject matter of  
the petition is granted; and it is further

ADJUDGED and DECLARED that pursuant to Religious Corporation  
Law § 17-c, title to the real property known as and by street  
addresses 3130 Bailey Avenue, 3132 Bailey Avenue, 3134 Bailey

Avenue, and 3420 Giles Place, County of the Bronx, City and State of New York (and designated on the Tax Map of Bronx County, respectively, as Block 3261, Lots 33 and 36 for the Bailey Avenue properties, and Block 3255, Lot 29 for the Giles Place) (the "real property") is confirmed to have passed from Kingsbridge Evangelical Lutheran Church to the petitioner Metropolitan New York Synod of the Evangelical Lutheran Church in America and that deeds from Kingsbridge Evangelical Lutheran Church to the Metropolitan New York Synod of the Evangelical Lutheran Church in America shall be recorded in the Office OF the City Register of Bronx County; and it is further

ADJUDGED and DECLARED that any officers of the petitioner Metropolitan New York Synod of the Evangelical Lutheran Church of America, acting individually and on behalf of the Metropolitan New York Synod of the Evangelical Lutheran Churn in America and Kingsbridge Evangelical Lutheran Church, be authorized to execute, acknowledge and deliver any and all such other documents required to transfer or otherwise confirm ownership of the real property to petitioner Metropolitan New York Synod of the Evangelical Lutheran Church in America, and to do all such things as may, on advice of Capell Barnett Matalon & Schoenfeld LLP, counsel to the petitioner Metropolitan New York Synod of the Evangelical Lutheran Church in America, be deemed reasonable, necessary, proper or convenient that such transfer be properly effectuated, and that the officers

of the Metropolitan New York Synod of the Evangelical Lutheran Church in America, each and any of them, acting on behalf of the petitioner Metropolitan New York Synod of the Evangelical Lutheran Church in America, pay all such customary and/or required costs and fees relating to the transfer of the real property; and it is further

ADJUDGED and DECLARED that all right, title and interest in and to the personal property within the real property, including all of its books and records and any money or its equivalent, wherever held by, for or on behalf of Kingsbridge Evangelical Lutheran Church, has passed to and now rests in petitioner Metropolitan New York Synod of the Evangelical Lutheran Church in America, and as such, petitioner is authorized and allowed to change the locks and secure possession of its real and personal property therein forthwith; and it is further

ADJUDGED and DECLARED that respondents Lloyd Berg, John Linins a/k/a John Linnis, John Doe 1 through 5 and Jane Doe 1 through 5 and/or any other individuals or entities occupying and/or using the subject real property for any purpose are enjoined from any further use, subject to the Court's contempt powers; and it is further

ADJUDGED and DECLARED that a permanent injunction enjoining respondents or any one of them from maintaining possession, custody or control, or representing or holding out themselves or any one

of them as officers, agents or clergy of Kingsbridge Evangelical Lutheran Church or as maintaining possession, custody or control, over any of the real or personal property, including all of its books and records and any money or its equivalent, wherever held by, for or on behalf of Kingsbridge Evangelical Lutheran Church; and it is further

ORDERED that the reply of petitioner that seeks summary dismissal of the counterclaims is granted and respondents' counterclaims are dismissed in their entirety; and it is further

ORDERED and ADJUDGED that petitioner, having an address at 475 Riverside Drive, New York, New York 10115, do recover from respondents, having an office at 3130 Bailey Avenue, Bronx, New York, costs and disbursements in the sum of \$ \_\_\_\_\_ as taxed by the Clerk, making in all the sum of \$ \_\_\_\_\_, and petitioner have execution therefor.

#### DECISION

Petitioner the Metropolitan New York Synod (Synod) of the Evangelical Lutheran Church in America (the "Church") commences this proceeding, pursuant to Religious Corporation Law § 17-c, seeking to have property located in Bronx County the real property, held by the Kingsbridge Evangelical Lutheran Church (the "Congregation") transferred to itself.

Petitioner is the ecumenical unit, one of sixty-five synods, of the larger Evangelical Lutheran Church of America, which has governing responsibilities over its member congregations in New York City, including, allegedly, the Congregation. Its verified petition asserts that respondent Lloyd Berg was the "Sunday pulpit supply" (as opposed to call) pastor and, that, upon information and belief, respondent John Linins, also known as John Linnis, was the president of the Congregation.

Petitioner asserts that, in accordance with § 13.24 of its Constitution, having found that, inter alia, "the membership of [the Congregation] has become so scattered or so diminished in numbers as to make it impractical for such a congregation to fulfill the purposes for which it was organized", and so as "to protect such congregation's property from waste and deterioration", it commenced ecclesiastical proceedings to take ownership, charge and control of the real property of the Congregation. At such proceedings, on June 23, 2015, the Synod adopted the resolution to take ownership and control of the real and personal property of the Congregation. Under the Synod's Constitution, the Congregation had a right to appeal, but never did so.

Pursuant to Religious Corporation Law § 17-C, to effectuate such resolution, petitioner brings this proceeding to transfer

title to and control of the subject real property and the contents thereof from the Congregation to itself.

Courts have repeatedly held that the petitioner and its affiliates upon presentation of supporting evidentiary matter are entitled to exercise jurisdiction and authority over member congregations pursuant to the Church's constitution. As stated by the Court,

"The constitution of ELCA [Evangelical Lutheran Church of America] and section 17-c of the Religious Corporations Law likewise authorize the Synod to take control of a congregation's property in order to protect the property from waste and deterioration, and the statute also provides that its provisions are '[s]ubject to the provisions of the governing documents of congregations' (Religious Corporations Law § 17-c [2] [c])."

Upstate New York Synod of Evangelical Lutheran Church in Am. v Christ Evangelical Lutheran Church of Buffalo, 185 AD2d 693, 693-94 (4<sup>th</sup> Dept 1992); see also Metro. New York Synod of Evangelical Lutheran Church of Am. v David, 95 AD3d 419 (1<sup>st</sup> Dept 2012).

In this case, the respondents' eleventh affirmative defense asserts that the Congregation never was under the jurisdiction of the petitioner. Their twelfth affirmative defense states that the Congregation withdrew from petitioner, of which petitioner received knowledge as of April 16, 2016.

This court finds that, in response to petitioner's prima facie evidence, respondents fail to raise an issue of fact with respect to whether the Synod has jurisdiction over the Congregation. Respondents' "general denial" of petitioner's allegations that the Congregation joined the Church and Synod in

1987 is insufficient to raise an issue of fact as to same. Moreover, respondents' evidence is internally inconsistent and therefore lacking in credibility.

Petitioner submits a complete copies of its certificate of incorporation dated September 21, 1987 and its own constitution and bylaws as of September 2017. In contrast, respondents attach to their verified answer only several pages of the Congregation's 200+ page constitution, which do not refute petitioner's proof that the Synod has jurisdiction over the Congregation. Each page of the Congregation's constitution contains the following footer "MODEL CONSTITUTION FOR CONGREGATIONS (11-2013)", which tends to support petitioner's assertion that "(b)y joining the Church and Synod in 1987, (the Congregation) adopted and attorned to the Synod's Constitution."

Chapter 6, entitled "CHURCH AFFILIATION, of the Congregation's constitution supports petitioner's proof that the Congregation is under the Church's, and therefore, the Synod's, jurisdiction, stating,

"This congregation shall be an interdependent part of the Evangelical Lutheran Church in America or its successors, and of the (insert the name of synod) Synod of the Evangelical Church in America. This congregation is subject to the discipline of the Evangelical Church in America."

The respondents' defense that the Congregation was never under the Synod's jurisdiction is contradicted by such excerpt

as well as by their twelfth affirmative defense that the Congregation "withdrew from Petitioner".

Moreover, the statement in the letter dated April 16, 2016, from respondent Berg to the Synod, attached to respondents' answer, "that the congregation has voted for a second time to withdraw from the Evangelical Lutheran Church in America" constitutes inadmissible hearsay. Respondents do not come forward with a copy of any Congregation membership resolution or other record of any special membership meeting or vote to withdraw from the Synod or the Church, such meeting or vote required under other provisions of the Congregation's own constitution according to the excerpts they submit. Nor do

respondents assert any date that the Congregation allegedly took its first vote to withdraw from the Church. This court notes that respondent Berg's April 16, 2016 letter was sent to petitioner only after the ecclesiastical proceedings of June 2015, and, in any event, concurs with petitioner that the actions taken in ecclesiastical proceedings are not reviewable by this court. Metropolitan New York Synod v David, supra. Accordingly, petitioner is entitled to the relief it seeks pursuant to Religious Corporation Law § 17-c.

<u>07/10/2020</u> DATE	<i>Debra A. James</i> DEBRA A. JAMES, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE