

Southern Baptist Church, Inc. v Samuel
2021 NY Slip Op 32546(U)
November 29, 2021
Supreme Court, Kings County
Docket Number: Index No. 526837/2021
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 526837/2021
Motion Date: 11-15-2021
Mot. Seq. No.: 1

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SOUTHERN BAPTIST CHURCH, INC.,
CHRISTOPHER TURMAN AS President and
representative of the majority-of the Board of Trustees of
Southern Baptist Church, Inc, HELEN DORTCH, as a
member and Deacon and Chairperson of the finance
committee for SOUTHERN BPATIST, Inc and
THOMAS SIMMONS As a member and Deacon on the
Deacon Board of SOUTHERN BAPTIST CHURCH,
INC.,

Plaintiff,

-against-

DECISION/ORDER

VERNAL SAMUEL, MARCIA WILLIAMS, CHARLES
BROWN SHANEEK SAMUEL, NANCY LEGREE,
SAMUEL MANNING, NIKKI LUCAS, MARION
NICOLLS, and FAITH BUILDERS INTERNATIONAL,
INC.,

Defendant.

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Upon the following e-filed documents, listed by NYSCEF as item numbers 1-65, the motion is decided as follows:

In this action involving a dispute as to who is in control of the Southern Baptist Church, Inc., (“SBC”), a religious corporation, the plaintiffs move by pre-answer order to show cause for a preliminary injunction.

On March 1, 2021, the Rev. Clarence Williamson, who at the time was the pastor of SBC, unilaterally appointed Vernal Samuel, Marcia Williams, Charles Brown, Shaneek Samuel, Nancy Legree, Samuel Manning, and Nikki Lucas to the Board of Trustees of SBC (“the New Board of Trustees”). The New Board of Trustees subsequently elected the Rev. Vernal Samuel the Pastor of SBC and then voted to amend the Certificate of Incorporation and the By-Laws of SBC and to transfer all SBC’s property, both real and personal, to Faith Builders International, Inc., which is also a religious corporation. The Rev. Williamson is now deceased.

In support of their pre-answer for a preliminary injunction, the plaintiffs maintain under the By-Laws that controlled the affairs of SBC on March 21, 2021, the Rev. Williamson lacked authority to unilaterally appoint the New Board of Trustees and that their appointments were therefore nullities. Plaintiffs further contend that all the actions taken by the New Board of Trustees following their appointment were also nullities.

The evidentiary materials submitted in support of the motion include an Amendment of the Certificate of Incorporation of SBC (Plaintiffs' Ex. B), which shows that at a corporate meeting of SBC was held on July 21, 1990 at which time Charles Gibbs, Joe Griffin, Violet Dortch, Louis Richardson, Barbara Turnage and Christopher Turman were elected as Trustees of SBC. The plaintiffs submitted admissible proof that out of these six individuals, Christopher Turman, Barbara Turnage-Wilkins and Louis Richardson are still living and that prior to March 1, 2021, they never resigned their positions as Trustees. Notably, plaintiff's Ex. B does not reflect that the Rev. Clarence Williamson was elected to the Board of Trustees at the on July 21, 1990 meeting. The record also demonstrates that neither Christopher Turman, Barbara Turnage-Wilkins nor Louis Richardson ever affirmatively voted to appoint the New Board of Trustees.

The 1990- By-Laws:

The record on this motion also include the 1990 By-Laws of SBC. It is unrefuted that up until the time the Rev. Williamson appointed the New Board of Trustees, these By-Laws controlled the affairs of SBC. Article IV of the 1990 By-Laws, in relevant part, provides as follows:

ARTICLE IV

TRUSTEES

Section 1. The number of trustees shall be Six. Trustees need not be residents of the State of New York, **nor members of the church**. The trustees, other than the first Board of Trustees, and except as provided in any Article of these By-laws, shall be elected at the annual meeting of the voting members, and each trustee elected shall serve until the next succeeding annual meeting and until his successors shall have been elected and qualified. The board of Trustees shall be authorized to increase their number by unanimous consent.

Section 2. Any vacancy occurring in the Board of Trustees may be filled by the affirmative vote of the majority of the remaining trustees but less than a quorum of the Board of Trustees. A trustee elected to fill a vacancy shall be elected for the unexpired portion of the term of his predecessor in office. Any office of trustee to be filled by reason of an increase in the number of trustees shall be filled by election at an annual meeting or at a special meeting of voting members called for that purpose. A trustee elected to fill a newly created trusteeship shall serve until the next succeeding annual meeting of voting members and until his successor shall have been elected or qualified.

...

Section 6. Non-Voting Membership. Enrolled members who shall without good cause absent themselves from the services of the Church for a period of three consecutive months or more, and who cease to contribute of their means to its support, or who may be out of harmony with the church teachings or its ministries, or who shall be under charges for misconduct shall be considered as inactive. These inactive members lose their voting privileges until they are restored to the fellowship.

Article V of the 1990 By-Laws governs Meetings of the Board of Trustees and, in relevant part, provides.

ARTICLE V

MEETINGS OF BOARD OF TRUSTEES

Section 1. Meetings of Board of Trustees, regular or special, may be held either within or without the State of ,

Section 2. The first meeting of each newly elected Board of Trustees shall be held at such time and place as shall be fixed by the vote of the voting members at the annual meeting, and no notice of such meeting shall be necessary to the newly elected trustees in order to legally constitute the meeting, provided a quorum is present or it may convene at such time and place as may be fixed by the consent in writing of all the trustees.

Section 3. Regular meetings of the Board of Trustees may be held upon such notice, or without notice, at such time and such place as shall from time to time be determined by the Board.

Section 4. Special meetings of the Board of Trustees may be called by the Chairman of the Board of Trustees or by the President on three days' notice to each trustee, either personally, or by mail or by telegram; special meetings shall be called by the Secretary in like manner and on like notice on the written request of two (2) trustees.

Section 5. Attendance of a trustee at any meeting shall constitute a waiver of notice of such meeting, except where a trustee attends for the purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board of Trustees need be specified in the notice or waiver of such meeting.

Section 6. A majority of the trustees shall constitute a quorum for the transaction of business unless a greater number is required by law or by the Articles of Incorporation. The action of the Board of Trustees must be done when a majority of the trustees are present at any meeting at which a quorum is present, unless the action of a greater number is required by statutes or by the Articles of Incorporation. If a quorum shall not be present at any meeting of trustees, the trustees present at such meeting may adjourn the meeting without notice, other than an announcement at the meeting, until a quorum shall be present.

Plaintiffs correctly contend that there are no provisions in the 1990 By-Laws which permitted the Rev. Williamson to act unilaterally in appointing the New Board of Trustees on March 1, 2021, even if he was a Trustee at the time. The 1990 By-Laws provided that there should be at least six Trustees (Article IV, Section 1) and set forth the means for filling any vacancies. In this regard, Article IV, Section 2, in relevant part, provides: “Any vacancy occurring in the Board of Trustees may be filled by the affirmative **vote of the majority** of the remaining trustees but less than a quorum of the Board of Trustees.” The record contains admissible proof that neither Christopher Turman, Barbara Turnage-Wilkins nor Louis Richardson, all of whom were members of the Board of Trustees on March 1, 2021, never affirmatively voted to approve the appointments of the New Board of Trustees. Thus, since there was never an “affirmative vote of the majority of the remaining trustees” to fill any vacancy in the Board of Trustees, the Rev. Williamson’s unilateral appointment of the New Board of

Trustees was a nullity. It necessarily follows that all the actions taken by the New Board of Trustees were also nullities.

The defendants contend since Christopher Turman, Barbara Turnage-Wilkins and Louis Richardson had not been active in SBC for many years prior to March 1, 2021, they lost their status as Trustees. Defendants rely on Article IV, Section 6 of the 1990 By-Laws which provides: “Enrolled members who shall without good cause absent themselves from the services of the Church for a period of three consecutive months or more, and who cease to contribute of their means to its support, or who may be out of harmony with the church teachings or its ministries, or who shall be under charges for misconduct shall be considered as inactive. These inactive members lose their voting privileges until they are restored to the fellowship.” For the above reasons, the defendants maintain that the Rev. Williamson was the sole remaining Trustee as of March 1, 2021 and acted appropriately when he unilaterally appointed the New Board of Directors.

First, respondents’ reliance on Article IV, Section 6 is misplaced. This section clearly applies only to “members¹” of SBC and not to Trustees. Indeed, pursuant to Article IV, Section 1 of the 1990 By-Laws, Trustees do not have to be members. Secondly, the only provision in the 1990 By-Laws that governs the term of a trustee is Article IV, Section 1, which provides, in relevant part, that “each trustee elected shall serve until the next succeeding annual meeting and until his successors shall have been elected and qualified.” There is no evidence in the record that prior to March 1, 2021, successor Trustees for Christopher Turman, Barbara Turnage-Wilkins and Louis Richardson were elected and/or qualified. Thus, the Court rejects defendant’s contention that as of March 1, 2021, Christopher Turman, Barbara Turnage-Wilkins and Louis Richardson were no longer Trustees.

In sum, the Rev. Williamson lacked authority to unilaterally appoint Vernal Samuel, Marcia Williams, Charles Brown, Shaneek Samuel, Nancy Legree, Samuel Manning, and Nikki Lucas as the New Board of Trustees on March 1, 2021. Their appointments to the Board of

¹ Article III of the 1990 By-Law defines the membership of SBC and distinguishes between “voting members” and “not-voting members.”

Trustees were therefore nullities and all the actions taken by the New Board of Trustees subsequent to March 1, 2021 were also nullities.

To establish their right to a preliminary injunction, the plaintiffs were required to demonstrate by clear and convincing evidence (1) the likelihood of ultimate success on the merits, (2) irreparable injury absent the grant of the injunction, and (3) a balance of the equities in the plaintiff's favor (*see* CPLR 6301; *Ginsburg v Ock-A-Bock Community Assn., Inc.*, 34 A.D.3d 637, 637, 825 N.Y.S.2d 119; *Koursiaris v. Astoria N. Dev.*, 143 A.D.2d 639, 641, 532 N.Y.S.2d 916). Here, the plaintiffs established their right to a preliminary injunction. The plaintiffs demonstrated that they will likely prevail on their claim that the Rev. Williamson acted without authority when he appointed the New Board of Trustees and that until SBS holds another election for the purpose of electing new trustees, those persons who were Trustees prior to March 1, 2021 should remain in control of SBS.

CPLR 6312(b) requires that, prior to the granting of a preliminary injunction, the plaintiffs are required to post an undertaking in an amount fixed by the court. This requirement may not be waived (*see Rourke Devs. v. Cottrell-Hajeck, Inc.*, 285 A.D.2d 805, 805, 727 N.Y.S.2d 667). Under the circumstances of this case, the Court finds any bond in the amount of \$2500 is appropriate.

Accordingly, it is hereby

ORDERED that the plaintiffs are directed to post a bond in the amount stated above; it is further

ORDERED that once the bond is posted and until further order of the Court or the election and qualification of new trustees,

- (1) Christopher Turman, Barbara Turnage-Wilkins and Louis Richardson shall be deemed the lawful members of the Board of Trustees of SBC (“the lawful Board of Directors”) and shall have all the authority set forth in the 1990 By-Laws to act on behalf of SBC;
- (2) Vernal Samuel shall be enjoined from acting as the pastor of SBC and in anyway acting on behalf of SBS;

- (3) The conveyance by defendant CHARLES BROWN and deed signed by Defendant CHARLES BROWN, dated August 26, 2021, NYC Document ID number 2021082700023001, between SOUTHERN BAPTIST CHURCH, INC., 820 Stanley Avenue, Brooklyn, New York 11207, and FAITH BUILDERS INTERNATIONAL, INC. is hereby rescinded and set aside;
- (4) Defendants are enjoined from conducting and/or engaging in any business on behalf of SBS as the Board of Trustees of SBS;
- (5) The changes and/or corporate amendments made by the Defendants are hereby vacated;
- (6) Defendants Vernal Samuel, Samuel Manning, Nikki Lucas, Marion Nicolls, Nancy Legree, Charles Brown, Shaneek Samuel, Marcia Williams are directed to turn over all documents, papers, and effects in their possession which belong to SBS to the lawful Board of Directors;
- (7) The defendants are directed to restore the original locks to SBC and/or provide keys to the locks at SBC to the Lawful Board of Trustees;
- (8) The defendants are restrained from bringing in, appointing and/or hiring any pastor, reverend or spiritual advisor to preside over SBC; and
- (9) The defendants are enjoined from denying any member or Trustee of SBS entry to SBC;

This constitutes the decision and order of the Court.

Dated: November 29, 2021



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020