

**Lutheran Church of the Risen Christ v Atlantic Dist.
of the Lutheran Church**

2024 NY Slip Op 33217(U)

September 12, 2024

Supreme Court, Kings County

Docket Number: Index No. 525890/20

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No.: 525890/20

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LUTHERAN CHURCH OF THE RISEN CHRIST,
MISSOURI SYNOD,

Mot. Seq. No.: 2

Plaintiff,

-against-

DECISION/ORDER

ATLANTIC DISTRICT OF THE LUTHERAN
CHURCH, MISSOURI SYNOD and KEY
COLLEGIATE CHARTER SCHOOL,

Defendants.

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Upon the following papers, listed on NYSCEF as document numbers 38-51 were read on this motion:

The plaintiff, LUTHERAN CHURCH OF THE RISEN CHRIST, MISSOURI SYNOD (“Risen Christ”), moves to renew and reargue the prior motion of defendant, ATLANTIC DISTRICT OF THE LUTHERAN CHURCH-MISSOURI SYNOD (the “Synod”) to dismiss the action, which was granted, and upon renewal and reargument, an order denying the motion.

Background:

This court dismissed Risen Christ’s complaint insofar as asserted against the Synod on the ground that the First Amendment forbids the Court from interfering in or determining the dispute between the parties, since such require application of religious principles (*Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 9 N.Y.3d 282, 286, 879 N.E.2d 1282, 1284–85; citing *Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151). In dismissing the action against the Synod, the Court noted that disputes involving religious parties or institutions, such as Risen Christ and the Synod, may be adjudicated by a secular Court without offending the First Amendment only if neutral principles of law are the basis for their resolution (*see First Presbyt. Church of Schenectady v. United Presbyt. Church in U.S. of Am.*, 62 N.Y.2d 110, 476 N.Y.S.2d 86, 464 N.E.2d 454; *Park Slope Jewish Ctr. v. Congregation B'nai Jacob*, 90 N.Y.2d 517, 521, 664 N.Y.S.2d 236, 686

N.E.2d 1330, citing *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775). The Court further noted that “neutral principles of law” may only be employed when application of objective, well-established principles of secular law can resolve the action without reference to any religious principle (*First Presbyt. Church*, 62 N.Y.2d at 119–120, 476 N.Y.S.2d 86, 464 N.E.2d 454; *Avitzur v. Avitzur*, 58 N.Y.2d 108, 115, 459 N.Y.S.2d 572, 446 N.E.2d 136). The Court concluded that one of the pivotal issues presented in this case, whether the Synod’s actions against Risen Christ were justified on the ground that Risen Christ engaged in syncretism by allowing a non-Lutheran minister to hold prayer services **at the property**. Under the Synod’s constitution, which Risen Christ was bound by, syncretism occurs when a congregation is either served by ministers of a different faith or participate in services of heterodox congregations or those of mixed confession (Synod’s Constitution, Article VI(2)(a)-(b)). The Court found that the resolution of this issue would involve the application of religious principles and could not be resolved by application of neutral principles of law.

In support of its prior motion to dismiss, the Synod submitted the affidavit of Rev. Dr. David H. Benke, an ordained minister of Word and Sacrament in the Lutheran Church Missouri Synod and the Synod. The Rev. Benke stated:

31. Pastor Demera retired at the end of September 2019. At that time the Synod provided, and the congregation accepted, two local pastors to fill the pastoral vacancy: Pastor Matthew Staneck and Pastor Curtis Dorsey. These pastors, both on the Synod's approved roster of ordained clergy, conducted the services and administered the Sacraments at Risen Christ according to the confessional standard of the Church. Under their clergy leadership, the congregation continued to have Sunday morning services until COVID-19 forced the closure of public spaces and places of worship in mid-March 2020. In response to the New York State Pause, On March 19, 2020, the Synod informed Risen Christ, as well as all other interdependent congregations, that every Synod-owned property would be closed.

32. **However, at that time, the Synod learned that the new leadership of Risen Christ had called a Pentecostal minister ("Bishop" Donald S. Hudson of the Holiness-Pentecostal Christian faith) to conduct prayer-services for the few remaining members of the congregation.** Risen Christ did not call a Lutheran pastor from the Synod's clergy roster and did

not request the Synod send another Lutheran pastor. See Print from Risen Christ's website attached hereto as Exhibit "G," which states:

Bishop Donald Sultan Hudson stepped in at a time of need and become the Pulpit Supply for Risen Christ Church, until the litigation process is complete. He was ordained in 1992 as a minister in the National Church of God in Christ religious body.

Some important distinctions, among others, between the Pentecostal and Lutheran Faiths is that those who believe in Pentecostalism hold differing views on sanctification, Baptism, The Lord's Supper, the Gifts of the Holy Spirit (Baptism of the Holy Spirit and tongues), and the end times.

33. Having the minister of another denomination conduct services for a Lutheran congregation is a grave offense to the Synod, the Church, and the Lutheran denomination itself. Such inter-denominational "services" are strictly prohibited by our doctrine and the Synod's Constitution (Article VI (2)), as syncretism and results in forfeiture of membership within the Synod (By-Laws of the Synod, § 2.5.4). Syncretism occurs when a congregation is either served by ministers of a different faith or participate in services of heterodox congregations or those of mixed confession. (See Article VI(2)(a)-(b) of Exhibit A.) By faithfully adhering to this practice whereby only those individuals who are members of the Synod or of a church body with which the Synod is in altar and pulpit fellowship, pastors and congregations preserve the integrity of their witness to the gospel of Christ as it is revealed in the Scriptures and confessed in the Lutheran confessional writings. In addition, it is an even graver offense to attend the Lord's Supper at a non-Lutheran altar since participation in Holy Communion, scripturally and confessionally understood, entails agreement in the Gospel and all its articles. It would be more than inappropriate to attend the Lord's Supper at an altar with which such agreement is not shared.

34. By calling this non-Lutheran minister and sharing the Lord's Supper with those who did not participate in the Holy Communion, as Scripturally and confessionally understood by the Synod and the Church, this congregation may no longer be considered a part of the Lutheran faith, nor a member of the interdependent churches of the Synod, nor of the Church itself-yet they seek to gain control of the Synod's property to conduct their syncretic services. This fractured congregation is hereby seeking to involve the Synod in breaking God's Law by forcing such worship

in the Visible Church of the Lord. The Synod may not abide or be a party to such conduct.

Risen Christ now argues that the Rev. Benke's affidavit does not support that Risen Christ brought in a non-Lutheran minister to conduct religious services **at the property**. Risen Christ submitted an affidavit from Dorothy Barnes, the Risen Christ's current President, who averred to the truth of this assertion. Significantly, however, Ms. Barnes did not address, and Risen Christ does not deny, that a non-Lutheran minister was brought in to act as Risen Christ's pastor and to conduct service outside the property. Indeed, in the memorandum of law submitted by Risen Christ in opposition to the prior motion, Risen Christ admitted that a non-Lutheran minister, Bishop Hudson was brought it to conduct such services off the premises, albeit for only a short period of time (NYSCEF Doc. No. 27, pp.14-15), after the Synod locked Risen Christ out of the premises.

Discussion:

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination" (CPLR 2221[e][2]; *Everhome Mortg. Co. v. Aber*, 195 A.D.3d 695, 695, 145 N.Y.S.3d 396, 397), and "shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221[e][3]; *Hart v. City of New York*, 5 A.D.3d 438, 772 N.Y.S.2d 574, 575). The new fact that Risen Christ relies upon on its motion to renew is Ms. Barnes' statement in her affidavit that Risen Christ never brought in a non-Lutheran minister to preform services **at the subject property**. The Synod contends that Risen Christ did not provide reasonable justification for failing to establish this fact in their opposition to the Synod's original motion.

Whether Risen Christ provided reasonable justification for failing to submit this new fact on its prior motion need not be addressed. Ms. Barnes' affidavit, even if considered, would not change the Court's prior determination. As stated above, Ms. Barnes did not state in her affidavit that Risen Christ **never** brought in a non-Lutheran minister to perform religious services for its members. She simply stated that Risen Christ never brought in a non-Lutheran minister to conduct religious services at the subject property. Again, Risen Christ admitted in the

memorandum of law submitted in opposition to the prior motion that it did indeed bring in a non-Lutheran minister to perform religious services for its congregation. Whether the non-Lutheran minister performed religious services on the premises, or off the subject property, as Risen Christ suggests, is simply not relevant to whether Risen Christ engaged in syncretism, or whether, as the Court previously found, the dispute between the parties is religious in nature and cannot be resolved without applying religious principles. Risen Christ's motion to renew is therefore denied.

A motion for reargument is addressed to the sound discretion of the court which determined the original motion, and leave to reargue may be granted upon a showing that the court overlooked or misapprehended the facts or the law, or otherwise mistakenly arrived at the original decision (*see Christopulos v. Christopulos*, 209 A.D.3d 968, 969, 175 N.Y.S.3d 731, *leave to appeal dismissed*, 39 N.Y.3d 1066, 204 N.E.3d 453, and *leave to appeal dismissed*, 39 N.Y.3d 1064, 204 N.E.3d 456; *LaSalle Bank N.A. v. Lawrence*, 186 A.D.3d 1507, 1508, 131 N.Y.S.3d 87).

Here, Risen Christ sufficiently demonstrated that in deciding the prior motion, the Court mistakenly concluded that Risen Christ brought in a non-Lutheran minister to perform religious services **at the property**, and that the Synod had locked Risen Christ out of the subject property before the non-Lutheran minister was brought in. Risen Christ's motion to reargue is therefore granted. Upon reargument, however, the Court adheres to its original determination. Again, whether the non-Lutheran minister performed services for Risen Christ on or off the subject property is not relevant to the issue of whether it engaged in syncretism, nor is it relevant to the issue of whether this case can be resolved without applying religious principles. Likewise, whether Risen Christ was locked out before or after Risen Christ brought in the non-Lutheran minister is not relevant to the issue of whether the First Amendment bars this Court from adjudication this matter.

The Court has considered Risen Christ's remaining arguments in support of the motion and find them to be without merit.

ORDERED the motion is renew is **DENIED**; and it is further

ORDERED that the motion to reargue is granted, but on reargument, the court adheres to its original determination.

This constitutes the decision and order of the Court.

Dated: September 12, 2024

PPS

PETER P. SWEENEY, J.S.C.

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