

**Board of Trustees v Ali**

2025 NY Slip Op 32526(U)

July 14, 2025

Supreme Court, Kings County

Docket Number: Index No. 524372/24

Judge: Carolyn E. Wade

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At an IAS Term, Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 14<sup>th</sup> day of July, 2025.

P R E S E N T: HON. CAROLIN E. WADE, J.S.C

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
THE BOARD OF TRUSTEES, THE OFFICERS  
AND, THE BOARD OF ELDERS OF THE MUSLIM  
COMMUNITY CENTER OF BROOKLYN, INC., and  
AKRAM AMIN KHAN, in his capacity as Member,  
President and Trustee,

Index No.: 524372/24

Plaintiffs,

-against-

**DECISION AND ORDER**

MUSHTAQ ALI; RASHAD MASUD; TAHSEEN  
ASI; KHALID ANSARI; SAGHIR KHAN;  
and JOHN DOES 1-20,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>6, 8, 12, 14, 16, 68-69, 76, 78</u>
Opposing Affidavits (Affirmations) _____	<u>42, 45-46, 80, 85</u>
Affidavits/ Affirmations in Reply _____	_____

Upon the foregoing papers, plaintiffs the Board of Trustees (Trustees), the Officers, and the Board of Elders of the Muslim Community Center of Brooklyn, Inc. (Board of Elders) and Akram Amin Khan (Akram), in his capacity as member, president and trustee, move for a preliminary injunction precluding defendants Mushtaq Ali, Rashad Masud, Tahseen Asi, Khalid Ansari, and Saghir Khan from: (i) approaching or coming within fifty (50) feet of the Muslim Community Center of Brooklyn (MCC), which is located at 1089

Coney Island Avenue, Brooklyn, New York 11230; (ii) directly or indirectly, interfering, or causing others to interfere, with plaintiffs' governance, operations, and dealings; and (iii) directly or indirectly, distributing or disseminating, or causing others to distribute or disseminate, any information about the MCC or its leadership (motion sequence number 1). Defendants Mushtaq Ali, Rashad Masud, Taseen Asi, Khalid Ansari, Saghir Khan (Saghir), Ishtiaq Ahmed and Asif Jahangir move for an order, pursuant to CPLR 3211 (a) (1), (3), (4) and (7), dismissing the complaint and, pursuant to CPLR 3211 (g), awarding attorney's costs and filing fees incurred with respect to the instant motion (motion sequence number 4).

Plaintiffs' motion (motion sequence number 1) is granted to the extent that it is **ORDERED** that: (1) defendants are enjoined from holding themselves out as the officers or controlling authority of the MCC; (2) defendants are enjoined from controlling or attempting to control any of the MCC's property, assets, or holdings, including any of MCC's bank accounts; (3) defendants, while on the MCC's premises or within 50 feet thereof, are enjoined from holding press conferences, protests or meetings relating to the control and governance of the MCC *except* that they may attend properly called meetings relating to the governance of the MCC at which they may participate and advocate for their positions as long as they respect the parliamentary rules governing the meetings; and (4) the grant of this preliminary injunction is conditioned upon plaintiffs posting an undertaking in the amount of \$2,000.00 within 15 days of entry of this order. Plaintiffs' motion is otherwise denied and the TRO is vacated.

Defendants' motion (motion sequence number 4) is granted to the extent that plaintiffs' civil conspiracy (third cause of action), breach of fiduciary duty (fourth cause of action), defamation (fifth cause of action), tortious interference with a business relationship (sixth cause of action), and tortious interference with a contract (seventh cause of action) are dismissed. Defendants' motion is otherwise denied.

### **BACKGROUND**

This action arises out of and primarily involves a governance dispute between plaintiffs and defendants regarding who are the proper leaders of the MCC and which documents govern its operation. The MCC is a Muslim community center that also serves as a home for a mosque, also referred to as Makki Masjid or simply Masjid. MCC incorporated as a religious corporation under the Religious Corporation Law on February 3, 1981 with the filing of a certificate of incorporation with the Kings County Clerk (NY St Cts Elec Filing [NYSCEF] Doc No. 71) (1981 Certificate of Incorporation). For many years, the MCC was governed by bylaws that are dated December 19, 1985 (1985 Bylaws) (NYSCEF Doc No. 72). The 1985 Bylaws identified the "general assembly," defined as the body of the voting members, as the "supreme body," of the MCC and gave them the authority to elect the trustees and officers of the center, who were to govern its affairs (1985 Bylaws arts. IV, V). Plaintiffs allege that the MCC is currently governed by bylaws dated December 20, 2018 (2018 Bylaws) (NYSCEF Doc. No. 2; First Amended Verified Complaint at ¶ 17, NYSCEF Doc. No. 30 [Amended Complaint]), which created a Board of Elders with the primary power over the operation of the MCC and power to nominate/appoint trustees of the MCC to be elected by the voting members of the MCC,

denominated the “General Assembly” (2018 Bylaws arts. III, IV). The 2018 Bylaws gave the trustees and officers, who are elected by the Board of Trustees, authority over the day-to-day operations of the MCC as a religious corporation (2018 Bylaws arts. V, VI). An amended certificate of incorporation dated August 29, 2024, and signed by Akram Amin Khan, as president/trustee, and non-party Farooq Muhammad, as trustee, identifies the trustees of the MCC without mention of Ali, Masud, Asi, and Ansari, was filed with the Kings County Clerk on September 1, 2024 (Amended Certificate of Incorporation).

According to the amended complaint, in July 2024, Ali, who plaintiffs assert is a former trustee, secretary, and member of the MCC, and Masud, who plaintiffs assert is a former trustee and member of the MCC, attempted to access MCC’s bank accounts and remove Akram from those accounts despite having no authority to do so under the 2018 Bylaws or the Religious Corporation Law (Amended Complaint at ¶¶ 7, 8, 29, 30). Also, in July 2024, Ali and Masud, in violation of the 2018 Bylaws and without notice to or the permission of the Board of Elders or the Trustees, conducted “sham” elections to appoint five individuals as trustees, appoint Masud as president, Asi, identified as a former trustee and member, as vice-president, Saghir, identified as a member of the MCC, as treasurer, Ansari, a former trustee and member of the MCC, as secretary (Amended Complaint at ¶¶ 9, 10, 11, 32, 33). In view of these actions by defendants, Akram, as president, on August 1, 2024, obtained the consent of the Trustees to remove Ali, Masud, Asi, and Ansari from the Board of Trustees (Amended Complaint at ¶ 37).

Nevertheless, in furtherance of Ali, Masud, Asi, Saghir, and Ansari’s assertion of control over MCC, Masud sent a Whats App message to the MCC community stating that

“Being Trustee, tomorrow Friday, Come to Masjid. We’re going to announce our new management. Thanks” (Amended Complaint at ¶¶ 40-43). Defendants came to Masjid on August 23, 2024, in their effort to take over the MCC, they “nearly resorted” to violence, attempted to engage in an altercation with those present at Masjid, and shoved a MCC trustee (Amended Complaint at ¶¶ 44-46). This attempted violence was only quelled by the presence of police and MCC security personnel (Amended Complaint at ¶ 45).

Masud, Asi, Khan, Ansari and Mushtaq placed their names on a letter dated September 8, 2024, that stated:

“On Friday, the 13<sup>th</sup> of September, we will be having a meeting for our community after Jummah to provide you with a full picture of what is happening in your masjid, as well as to discuss and take into account your inputs regarding the ongoing issues. There are a few people with vested interest in continuing the status quo and chaos that has been going on for many years. Therefore, it is time we make difficult decision regarding the future of the masjid. This cannot continue and it is time we discuss the possibility of taking legal action to finally resolve these matters once and for all.”

On September 11, 2024, this court granted a temporary restraining order (TRO) (NYSCEF Doc No. 16) that prohibited Ali, Masud, Asi, Ansari, and Saghir from:

- a. Approaching or coming within fifty (50) feet of the Premises;
- b. Directly or indirectly, interfering, or causing others to interfere, with Plaintiffs’ governance, dealings, or operations; and
- c. Directly or indirectly, distributing or disseminating, or causing others to distribute or disseminate, any information about the MCC or its leadership.”

Plaintiffs assert that they served a copy of the TRO with notice of entry on Ali, Masud, Asi, Ansari, and Saghir by overnight mail on September 11, 2024 (Amended Complaint at ¶ 57). Masud and Ansari went to the Masjid on September 13, 2024, where they were personally presented with the TRO (Amended Complaint at ¶ 58). Despite the TRO, a police presence was required to ensure that Masud and Ansari left the Masjid, and after leaving they still proceeded to shout at MCC's leadership and congregants and attempted to hold a press conference with more than 100 people present "so as to continue the Defendants' efforts to cause an insurrection and to take over the Mosque despite this Court entering the TRO" (Amended Complaint at ¶¶ 59-61).

Ali and Masud thereafter recruited Ahmed and Jahangir, who plaintiffs assert are not members of the MCC, to further their agenda of changing the leadership of the MCC. In this regard, Ahmed and Jahangir purportedly created a WhatsApp message group with more than 100 members of the MCC community (Amended Complaint ¶¶ 62-69).

Based on these factual allegations, plaintiffs pleaded a cause of action for a declaratory judgment (first cause of action) seeking a declaration that all actions taken at the July 2024 meeting at which five additional trustees were appointed and Masud, Asi, Saghir, and Ansari were appointed officers were ultra vires and otherwise null and void, that defendants have been properly removed from the board of trustees and are no longer trustees, members and/or officers of the MCC, and that the five additional persons were never duly or properly elected or appointed as trustees of the MCC (Amended Complaint at ¶¶ 79-85).

Plaintiffs, in their second cause of action based on violations of the 2018 Bylaws, seek a permanent injunction enjoining Defendants from “(i) approaching or coming within fifty (50) feet of the MCC; (ii) interfering with any of Plaintiffs’ operations or dealings; and (iii) directly or indirectly, distributing or disseminating, or causing others to distribute or disseminate, any information about the MCC or its leadership” (Amended Complaint at ¶¶ 86-94; Amended Complaint, Wherefore clause at B).

Plaintiffs’ third cause of action is for civil conspiracy based on defendants working together as part of a fraudulent scheme to take over the new management of the MCC (Amended Complaint at ¶¶ 95-103).

In the fourth cause of action, premised on breach of fiduciary duty as against Ali, Masud, Asi and Ansari, plaintiffs allege that such individuals breached their fiduciary duties, as members and trustees, by attempting to wrest control over the MCC through the alleged sham election and representations to MCC’s membership that they were the new management (Amended Complaint at ¶¶ 104-116). Plaintiffs additionally allege that Ali, while a trustee, breached his fiduciary duty through his operation of Rawal Construction, a company owned and operated by him, that entered into a contract with the MCC to perform construction work (Amended Complaint at ¶¶ 21, 24). Namely, plaintiffs assert that Rawal Construction failed to perform and/or properly perform some of the work and ceased operations, leaving plaintiffs without recourse against it and requiring plaintiffs to incur significant expenses to address these failures (Amended Complaint at ¶¶ 22-24).

Plaintiffs’ fifth cause of action for defamation is based on Masud’s text message, dated August 22, 2024, stating, “Being Trustee, tomorrow Friday [August 23, 2024], come

to Masjid [MCC]. We're going to announce our new management. Thanks" and based on similar texts authored by Ali, Masud, Asi, Ansari and Saghir on September 8, 2024, "confirming their intent to attempt to takeover the MCC and Mosque" (Amended Complaint at ¶¶ 117-126).

With respect to plaintiffs' sixth cause of action for tortious interference with a business relationship/prospective economic advantage (Amended Complaint at ¶¶ 127-138), plaintiffs allege that defendants' actions with respect to third-parties, including congregants and potential donors include:

"(i) telling these third-parties that the Defendants will be taking over the MCC; (ii) that the MCC will be under new leadership; (iii) by attempting to remove Akram as the president of the MCC; attempting to take over and remove Akram from the MCC bank accounts; (iv) by creating WhatsApp groups to continue their efforts; and (v) by attempting a physical take over the MCC and its real property, the Mosque" (Amended Complaint at ¶ 132).

Finally, in the seventh cause of action for tortious interference with a contract, plaintiffs allege that the 2018 Bylaws serve as contract between them as trustees and officers of the MCC and the MCC and that defendants interfered with this relationship by seeking to remove plaintiffs as trustees and officers of the MCC (Amended Complaint at ¶¶ 139-148).

As noted above, this court granted the TRO on September 11, 2024. Defendants' subsequent motion to vacate the TRO (motion sequence number 3) was denied in an order

dated October 9, 2024, which provided that the TRO was to remain in effect until the hearing on the preliminary injunction calendared for November 13, 2024.<sup>1</sup>

In support of their motion to dismiss, defendants submit affirmations from Ali and Masud addressing plaintiffs' assertions. Ali, in his affirmation (NYSCEF Doc No. 78), states that he was a founding member of the MCC, that he has long served as a trustee, and served as secretary of the MCC from 1985 to 1989. Since 1981, the same persons have largely served as trustees without elections by MCC members as part of the MCC's General Assembly as required by the 1981 certificate of incorporation. Similarly, although successive persons served as president of MCC for four-year terms from 1989 to 2009, these persons were not elected by the General Assembly as required by the 1985 Bylaws, but rather, were selected in closed meetings "by certain sets of individuals" (Ali aff. at ¶ 6). Akram was elected in this manner in 2009, but no elections of any manner have been held since that date and Akram has continued to serve as president to date.

According to Ali, no meetings of the General Assembly were called from 2009 to 2018, when a meeting of the General Assembly was called concerning the governance of the MCC. No issues were definitively resolved at this 2018 meeting, and, contrary to plaintiffs' assertions, at no time were new bylaws issued, drafted or promulgated. Similarly, contrary to plaintiffs' assertions, there is no institutional body known as the Board of Elders associated with the MCC.

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<sup>1</sup> The court notes that it will deem the papers defendants submitted in support of their motion to vacate the TRO as their opposition to the preliminary injunction.

To Ali's knowledge, and based on his interactions with Akram, Akram suffered a stroke or similar such illness at some point during 2022 and has since been "incapacitated or substantially mentally and physically impaired" (Ali Aff. at ¶ 13). In view of Akram's apparent incapacity, a group of involved members organized a meeting that was held on December 10, 2023, with the aim of reestablishing compliance with the 1985 Bylaws and holding elections in the presence of the General Assembly. At this meeting, Ali was "nominated" as interim general secretary and Masud was "nominated" as interim president until elections in the General Assembly could be held. Notice of meetings to be held for elections was thereafter provided to the membership of the MCC, and, in July 2024, Masud, Asi, Ansari and Saghir were elected as the officers of the MCC. Despite the elections, individuals, including Ikram Qureshi and Zafar Iqbal, have attempted to retain control over the MCC and are using Akram's name to initiate legal proceedings and issue edicts to MCC's membership based on fraudulent list of trustees and other corporate documents.

Masud, in his affirmation, asserts facts similar to Ali regarding Akram's incapacity and the involvement of Ikram Qureshi and Zafar Iqbal in the affairs of MCC, and alleges that these issues led to the December 2023 meeting at which Masud was elected interim president. Masud thereafter gave notice of General Assembly meetings which lead to Masud, Asi, Ansari and Saghir being elected officers and a slate of additional trustees being elected. Masud further disputes plaintiffs' assertion that the police were required to prevent a forcible takeover, and alleges that there was no physical altercation on that date.

In opposition to defendants' motion, Akram has submitted an affirmation in which he denies that he is mentally incapacitated, asserts that he is still president, and disputes

Ali and Masud's assertions that police intervention was not required in August and September 2024.

## DISCUSSION

### *Motion to Dismiss*

In moving to dismiss, defendants initially contend that plaintiffs' Amended Complaint should be dismissed for want of standing or lack of capacity pursuant to CPLR 3211 (a) (3). The business of a religious corporation is conducted by its board, and, absent a provision in a corporation's bylaws or action by the board barring a corporation's president from acting, a president has presumptive authority to commence an action (*see Sterling Indus. v Ball Bearing Pen Corp.*, 298 NY 483, 490 [1949]; *Polish-American Media, Inc. v Jozwiak*, 29 AD3d 663, 664 [2d Dept 2006]; *TJI Realty v Harris*, 250 AD2d 596, 597-598 [2d Dept 1998]; Religious Corporations Law §§ 5, 200; Not-For-Profit Corporation Law §§ 202 [a] [2], 701).<sup>2</sup> As such, plaintiffs' verified assertion that Akram is MCC's president is sufficient to demonstrate plaintiffs' authority to prosecute the action for pleading purposes and it is defendants' burden to demonstrate, prima facie, plaintiffs' lack of standing (*see Sikh Forum, Inc. v Saluja*, 227 AD3d 1024, 1025 [2d Dept 2024]; *Deutsche Bank Trust Co. Ams. v Vitellas*, 131 AD3d 52, 59-60 [2d Dept 2015]; *Polish-American Media, Inc.*, 29 AD3d at 664).

Defendants' assertion that Akram was no longer the president of MCC at the time the action was commenced in view of the votes at the General Assembly meetings during

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<sup>2</sup> The court notes that, pursuant to Religious Corporations Law § 2-b, the provisions of the Not-For-Profit Corporation Law are applicable to a religious corporation unless the provision at issue is inconsistent with the Religious Corporation Law or other statute.

May-July 2024 that led to Masud's election, while perhaps sufficient to demonstrate an issue of fact as to standing, fails to do so as a matter of law. Namely, assuming that the 1985 Bylaws have not been supplanted by the 2018 Bylaws as alleged by Ali, defendants have not addressed whether these meetings at which elections were held may be deemed annual meetings of the General Assembly, which had not apparently been held for many years, or "special meetings" that had been called by the Board,<sup>3</sup> all of the officers, or a request to the Board by 20 percent of the voting members of the MCC (1985 Bylaws art. IV [A] [5]). Absent proof of properly called meetings, defendants have failed to demonstrate that Akram or any other officers of the MCC were supplanted by the new officers aligned with defendants since corporate office holders generally retain their positions until their successors are elected and qualified (*see Trustees of Gallilee Pentecostal Church, Inc. v Williams*, 65 AD3d 1221, 1223-1224 [2d Dept 2009]; *Matter of Rye Psychiatric Hosp. Ctr.*, 101 AD2d 309, 317 [2d Dept 1984], *reversed on other grounds* 66 NY2d 333 [1985]; *Schwimmer v Welz*, 24 Misc3d 1202[A], 2009 NY Slip Op 51230[U], \*3 n4 [Sup Ct, Kings County 2009]; Religious Corporation Law § 134; N-PCL 703 [c]; *see also Matter of Kahler v McNab*, 48 NY2d 625, 626-627 [1979]; *Temple-Ashram v Satyanandji*, 84 AD3d 1158, 1160-1161 [2d Dept 2011]). In addition, in view of Ali's assertion that MCC's trustees have essentially disregarded the requirements of the 1985 Bylaws relating to the election of trustees and the selection of the president and officers of the MCC from the beginning, the 1985 Bylaws may be deemed abrogated by non-usage

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<sup>3</sup> Under the 1985 Bylaws, all actions of the Board are decided by a majority of the Board, assuming that at least a quorum of 50 percent of the Board is present (1985 Bylaws, at 3).

even if they were not supplanted by the 2018 Bylaws (*see Matter of Venigalla v Nori*, 11 NY3d 55, 62 [2008]; *Pomeroy v Westaway*, 189 Misc 307, 310 [Sup Ct, New York County 1947], *affd* 273 App Div 760 [1st Dept 1947], *lv denied* 273 App Div 878 [1st Dept 1948]; *cf. Laffey v Laffey*, 174 AD3d 586, 589 [2d Dept 2019]).<sup>4</sup> Under these circumstances, the issue of plaintiffs' standing or capacity to sue is so intertwined with the merits of the action that it would be improper to dismiss based on standing or capacity at this preliminary stage (*see Smith Cairns Subaru, Inc. v Subaru Distrib. Corp.*, 41 Misc 3d 1222[A], 2013 NY Slip Op 51807[U], \*7 [Sup Ct, Westchester County 2013]; Siegel, NY Prac § 261 [6<sup>th</sup> ed] [online version]).

Turning to the branch of defendants' motion to dismiss under CPLR 3211 (a) (1) and (7), in addressing a CPLR 3211 (a) (7) motion, a court must "accept the facts as alleged in the complaint as true, accord plaintiffs 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 NY2d 83, 87-88 [1994]; *see Goldberg v KOSL Bldg. Group, LLC*, 236 AD3d 995, 996 [2d Dept 2025]; *Boyle v North Salem Cent. Sch. Dist.*, 208 AD3d 744, 745 [2d Dept 2022]). "Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus in determining a motion to dismiss" (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). "Upon the submission of evidentiary material in

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<sup>4</sup> On the other hand, it is unclear whether the election of trustee requirements contained in the 1981 Certificate of Incorporation, which indicated that MCC was incorporating pursuant to Religious Corporation Law §§ 191 and 193 (which are part of Article 10 of the Religious Corporation Law), may be disregarded based on non-usage (*cf. Matter of Venigalla*, 11 NY3d at 61-62 [trustees of article 10 corporations are elected by the body's members]). In addition, although plaintiffs assert that the 1981 Certificate of Incorporation has been amended by the Amended Certificate of Incorporation, Akram's averments regarding the approval of this amended certificate are conclusory.

support of such a motion, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one and, unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate” (*Klostermeier v City of Port Jervis*, 200 AD3d 866, 867-868 [2d Dept 2021] [internal quotation marks omitted]; see *Yan Ping Xu v Van Zwiennen*, 212 AD3d 872, 874 [2d Dept 2023]).

Under CPLR 3211 (a) (1), a dismissal is warranted only if “the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; see *Leon*, 84 NY2d at 88]). “To constitute documentary evidence, the evidence must be ‘unambiguous, authentic, and undeniable’” (*Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017], quoting *Granada Condominium III Assn. v Palomino*, 78 AD3d 996, 997 [2d Dept 2010]), “such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable” (*Phillips*, 152 AD3d at 807). “Conversely, letters, emails, and . . . affidavits, do not meet the requirements for documentary evidence” (*id.*).

Contrary to defendants’ contentions, plaintiffs’ have adequately pleaded a cause of action for a declaratory judgment in that plaintiffs have pleaded a claim relating to the rights and legal relations of the parties to a justiciable controversy (see *Twitchell Tech. Prods., LLC v Mechoshade Sys., LLC*, 227 AD3d 45, 52 [2d Dept 2024]; *Minovici v Belkin BV*, 109 AD3d 520, 524 [2d Dept 2013]). Nor have defendants shown that the motion to dismiss the declaratory judgment cause of action should be treated as one seeking a

declaration in defendants' favor (*see Twitchell Tech. Prods., LLC*, 227 AD3d at 52; *Minovici*, 109 AD3d at 524).

In this regard, the declaration sought by plaintiffs that defendants' actions taken at the July 2024 meeting at which five additional trustees were appointed and Masud, Asi, Saghir, and Ansari were appointed officers were ultra vires and otherwise null and void may appropriately be addressed in a declaratory judgment action, as opposed to a special proceeding (*see Congregation Erech Shai Bais Yosef, Inc. v Werzberber*, 189 AD3d 1165, 1166 [2d Dept 2020]; *Trustees of Gallilee Pentecostal Church, Inc.*, 65 AD3d at 1223-1224). Even if it is determined that plaintiffs' allegations regarding the propriety of the July 2024 elections are more appropriately addressed as a special proceeding under Not-For-Profit Corporation Law § 618,<sup>5</sup> this court has the authority to deem it brought in the proper fashion (*see Sikh Forum, Inc.*, 227 AD3d at 1025-1026; *Esformes v Brinn*, 52 AD3d 459, 462-463 [2d Dept 2008]; CPLR 103 [c]). Similarly, issues of whether plaintiffs properly removed defendants as trustees pursuant to the 1985 Bylaws likewise may be addressed as part of a declaratory judgment action (*see Watson v Christie*, 288 AD2d 29, 29 [1st Dept 2001]; *Kelley v Gupta*, 80 Misc 3d 1234[A], 2023 NY Slip Op 51163[U], \*18-20 [Sup Ct, Nassau County 2023]; *see also Geeta Temple-Ashram*, 142 AD3d at 1134; *cf. Matter of Congregation Yetev Lev D'Satmar, Inc. v Kahana*, 9 NY3d 282, 286-287 [2007] [courts may adjudicate disputes involving religious institutions as long as neutral principles of law, such as a congregation's bylaws, are the basis for the resolution]; *Ming Tung v*

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<sup>5</sup> Religious corporations are subject to the provisions of the Not-For-Profit Corporation Law, with certain exceptions, unless the provisions conflict with the Religious Corporations Law (Religious Corporation Law § 2-b).

*China Buddhist Assn.*, 124 AD3d 13, 20 [1st Dept 2014], *affd* 26 NY3d 1152 [2016], *cert denied* 580 US 1049 [2017]; *Schwimmer v Welz*, 56 AD3d 541, 543-544 [2d Dept 2008]).

For essentially the same reasons discussed above with respect to standing, defendants' evidentiary proof fails to demonstrate that plaintiffs' material allegations are not facts at all (*see Klostermeier*, 200 AD3d at 867-868). Namely, Ali's affirmation fails to show more than a factual issue as to whether the 1985 Bylaws still govern the MCC (*see Matter of Venigalla*, 11 NY3d at 62; *Pomeroy*, 189 Misc at 310; *cf. Laffey v Laffey*, 174 AD3d at 589). Even assuming the 1985 Bylaws still apply, since corporate office holders generally retain their positions until their successors are elected and qualified, absent unquestioned proof of properly called meetings, defendants have failed to demonstrate that Akram and any other officers of MCC were supplanted by Masud, Asi, Ansari and Saghir as the officers of the MCC (*see Trustees of Gallilee Pentecostal Church, Inc.*, 65 AD3d at 1223-1224; *Matter of Rye Psychiatric Hosp. Ctr.*, 101 AD2d at 317; Religious Corporation Law § 134; N-PCL 703 [c]; Business Corporation Law § 703 [b]; *see also Eklund v Pinkey*, 31 AD3d 908, 910 [3d Dept 2006]). Likewise, assuming that the meeting minutes and notices submitted by defendants are deemed documentary evidence within the meaning of CPLR 3211 (a) (1), the documents, for the same reasons, fail to conclusively establish a defense a matter of law (*see Goshen*, 98 NY2d at 326-327; *Frankel v Board of Mgrs. of the Cent. Park W. Condominium*, 177 AD3d 465, 465-466 [1st Dept 2019]). In sum, plaintiffs have stated a declaratory judgment cause of action and defendants have failed to demonstrate, as a matter of law, that they are entitled to a declaration in their favor on this cause of action.

These same factual allegations also support a finding that plaintiffs have a cause of action based on a breach of the Bylaws (*see Watson*, 288 AD2d at 29; *Kelley*, 2023 NY Slip Op 51163, \*18-20; *see also Tsui v Chou*, 203 AD3d 619, 528-529 [1st Dept 2022]).

On the other hand, plaintiffs' cause of action for civil conspiracy (third cause of action) is dismissed as civil conspiracy is not a tort in New York in the absence of an actionable underlying tort, and, as discussed below, plaintiffs' have failed to state a cause of action with respect to any cognizable underlying torts alleged in the complaint (*see 25-86 41st St. LLC v Guzman*, 234 AD3d 649, 650-651 [2d Dept 2025]; *Commercial Realty Servs. of Long Is., Inc. v Mehran Enters., Ltd.*, 194 AD3d 1008, 1011 [2d Dept 2021]).

Regarding the breach of fiduciary duty cause of action, the elements of such a cause of action "are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct" (*Weinberg v. Picker*, 172 AD3d 784, 788 [2d Dept 2019] [alterations and internal quotation marks omitted]). An action for breach of fiduciary duty must be pleaded with particularity under CPLR 3016 (b) (*see Mann v Sasson*, 186 AD3d 823, 824 [2d Dept 2020]). Undoubtedly, the trustees of a religious corporation have a fiduciary obligation to act on behalf of the corporation in good faith and with reasonable care to advance its interest (*see CH v RH*, 18 Misc 3d 268, 275 [Sup Ct, Nassau County 2007]; *see also Pebble Cove Homeowners' Assn. v Shoratlantic Dev. Co.*, 191 AD2d 544, 545 [2d Dept 1993], *lv dismissed* 82 NY2d 802 [1993]; N-PCL 717 [a]). However, assuming, without deciding, that the alleged "sham elections" and defendants' assertions that they now constitute the leadership of the MCC can make out a breach of loyalty to the MCC, and thus, a breach of fiduciary duty,

plaintiffs' conclusory assertions that they have suffered damages as a result of such conduct fails to satisfy the pleading requirements of CPLR 3016 (b) (*see Mann*, 186 AD3d at 824; *Berlin v Jakobson*, 137 AD3d 659, 660 [1st Dept 2016]).

The breach of fiduciary duty claims premised on Ali's ownership interest in Rawal Construction and the alleged incomplete/defective work performed by it likewise fail. In moving to dismiss this aspect of the cause of action, defendants have submitted the complaint in a prior action brought by the MCC against Akram and Ali, amongst others, that had appended to it a contract between the MCC and Rawal Construction for construction work signed by Akram on behalf of the MCC and Ali on the behalf of Rawal Construction. This contract is the kind of document that may be considered pursuant to CPLR 3211 (a) (1) (*see Bernard v Citibank, N.A.*, 195 AD3d 783, 786 [2d Dept 2021]), and it shows that Ali's relationship with Rawal Construction was known to the MCC, and thus there was no breach of fiduciary duty based on an undisclosed conflict of interest (*see Deason v Fujifilm Holdings Corp.*, 165 AD3d 501, 502 [1st Dept 2018]; *cf. Birnbaum v Birnbaum*, 73 NY2d 461, 466-467 [1989]; *Peter's Necessities for Pets L.P. v Pet's Necessities, Ltd.*, 106 AD3d 577, 578 [1st Dept 2013]). Moreover, to the extent that Rawal Construction's failure to perform or properly perform the construction work can establish a breach of fiduciary duty by Ali (*see Pebble Cove Homeowners' Assn., Inc.*, 191 AD2d at 545), the conclusory allegations regarding these failures and the damages suffered by plaintiffs are insufficient to satisfy the pleading requirements of CPLR 3016 (b) (*see Mann*,

186 AD3d at 824; *Berlin*, 137 AD3d at 660; *Theaprin Pharms., Inc. v Conway*, 137 AD3d 1254, 1255 [2d Dept 2016], *lv denied* 28 NY3d 909 [2016]).<sup>6</sup>

With respect to plaintiffs' fifth cause of action for defamation, plaintiffs have not alleged that they suffered special damages in their libel cause of action (*see Whelan v Cuomo*, 220 AD3d 979, 981 [2d Dept 2023], *lv denied & dismissed* 41 NY3d 975 [2024]; *Franklin v Daily Holdings, Inc.*, 135 AD3d 87, 93 [1st Dept 2015]). Although special damages need not be proved where the statement at issue constitutes libel per se (*see Rinaldi v Holt, Rinehart & Winston*, 42 NY2d 369, 379 [1977], *cert denied* 434 US 969 [1977]; *Whelan*, 220 AD3d at 981), plaintiffs have failed to adequately plead libel per se. "Any written or printed article is libelous or actionable without alleging special damages if it tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of [plaintiff] in the minds of right-thinking persons, and to deprive [plaintiff] of their friendly intercourse in society" (*Rinaldi*, 42 NY2d at 379, quoting *Sydney v MacFadden Newspaper Publ. Corp.*, 242 NY 208, 211-212 [1926]; *Rosenthal v MDX Med., Inc.*, 152 AD3d 811, 811 [2d Dept 2017], *lv denied* 30 NY3d 906 [2017]). Libel per se is also made out where the statement "tends to disparage a person in the way of his [or her] office, profession or trade" (*Nichols v Item Pubs.*, 309 NY 596, 601 [1956]; *Rosenthal*, 152 AD3d at 811). Here, defendants' assertions to the effect that they constituted the leadership of the MCC, that Masud was its president, and that five additional persons were appointed as trustees, even if deemed false, did not expose

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<sup>6</sup> In view of this finding, this court has not reached defendants' additional assertion that this aspect of plaintiffs' breach of fiduciary duty cause of action is barred, pursuant to CPLR 3211 (a) (4), by the prior action relating to the construction.

plaintiffs to the kind of harm required to make out libel per se (*see Nichols v Item Publs.*, 309 NY 596, 601-602 [removal of a pastor from office carries no imputation of dishonesty or lack of professional capacity]; *Rosenthal*, 152 AD3d at 811-812; *Chang v Fa-Yun*, 265 AD2d 265, 265 [1st Dept 1999]; *School of Visual Arts v Kuprewicz*, 3 Misc 3d 278, 283-285 [Sup Ct, New York County 2003]).

Additionally, to the extent that other statements contained in Whats App messages appended to the amended complaint alleging “corruption” on the part of plaintiffs can be attributed to defendants, these hyperbolic statements denigrating plaintiffs’ governance of the MCC, when taken in context, are such that a reasonable reader would have concluded that they state opinions about plaintiffs, rather than facts about them (*see Rowbotham v Wachenfeld*, 194 AD3d 528, 529 [1st Dept 2021]; *Board of Mgrs. of Brightwater Towers Condominium v Shlivko*, 186 AD3d 553, 554 [2d Dept 2020], *affirming* 62 Misc 3d 1206[A], 2019 NY Slip Op 50008[U] [Sup Ct, Kings County 2019]; *Matter of Konig v WordPress.com*, 112 AD3d 936, 937 [2d Dept 2013]) and thus, do not make out a cause of action for libel.

The sixth cause of action for tortious interference with a business relationship is not adequately pleaded. Among other things, much of the alleged conduct was directed at plaintiffs, rather than at third-parties with whom plaintiffs had a prospective business relationship (*see Carvel Corp. v Noonan*, 3 NY3d 182, 192 [2004]; *Ross v State Univ. of N.Y.*, 166 AD3d 1034, 1035 [2d Dept 2018]). Plaintiffs’ allegations regarding defendants’ conduct also simply does not rise to the criminal or independent tortious conduct required to state such a claim or make-out the alternative showing that defendants acted solely for

the purpose of harming plaintiffs (*see Carvel Corp.*, 3 NY3d at 190; *Singer v de Blasio*, 215 AD3d 440, 441 [1st Dept 2023]; *Law Offs. of Ira H. Leibowitz v Landmark Ventures, Inc.*, 131 AD3d 583, 585-586 [2d Dept 2015]). The vague allegations that defendants' conduct interfered with plaintiffs' relationship with unnamed donors and MCC's congregants fail to identify the business relationships with those persons that were affected by defendants' conduct with any specificity or that plaintiffs suffered damages as a result of such conduct in other than conclusory fashion (*see RSR Corp. v Leg Q LLC*, 214 AD3d 463, 464-465 [1st Dept 2023], *lv denied* 40 NY3d 902 [2023]; *Inspirit Dev. & Constr., LLC v GMF 157 LP*, 203 AD3d 430, 432 [1st Dept 2022]; *Caplan v Tofel*, 65 AD3d 1180, 1181 [2d Dept 2009]).

With respect to the seventh cause of action, the elements of a cause of action alleging tortious interference with contract are: "the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom" (*Lama Holding Co. v Smith Barney*, 88 NY2d 413, 424 [1996]). Here, plaintiffs' assertion that defendants' actions in, among other things, asserting their control over the MCC tortiously interfered with the bylaws fails to state a cause of action. This is so because the bylaws (whether the 1985 Bylaws or the 2018 Bylaws), constitute the rules addressing the governance and operation of the MCC in its relations with all the parties to this case. The bylaws thus do not constitute an agreement between the plaintiffs and a third-party as is required to state a tortious interference with contract cause of action (*see Ferdinand v Siegel*, 236 AD3d 861, 862 [2d Dept 2025]; *see*

also *U.S. Bank N.A. v Kahn Prop. Owner, LLC*, 206 AD3d 855, 858 [2d Dept 2022]; *Bradbury v Israel*, 204 AD3d 563, 564 [1st Dept 2022]). Additionally, although plaintiffs allege that defendants have interfered with plaintiffs' contractual responsibilities under the bylaws, plaintiffs make no assertion that defendants' actions induced a third-party to breach the bylaws (see *Commercial Realty Servs. of Long Is., Inc.*, 194 AD3d at 1010-1011).

The court, however, denies the portion of defendants' motion, pursuant to CPLR 3211 (g), in which they seek attorney's costs and fees in the preparation of the motion. Pursuant to the anti-SLAPP law (see Civil Rights Law §§ 70-a, 76-a; CPLR 3211 [g]-[h]), once a defendant demonstrates that an action falls within its parameters and obtains dismissal of such action pursuant to CPLR 3211 (a) (7), the defendant is entitled to a mandatory award of attorney's fees pursuant to Civil Rights Law § 70-a (1) (a) (*Reeves v Associated Newspapers, Ltd.*, 232 AD3d 10, 12 [1st Dept 2024]). Contrary to defendants' contentions, however, the Whats App messages and other communications with the MCC community were directed at a limited private audience and concerned private matters relating to the governance of the MCC, and, as such, this action does not involve a "communication in a place open to the public or a public forum in connection with an issue of public interest" within the meaning of Civil Rights Law § 76-a (1) (a) (see *Tsamasiros v Jones*, 232 AD3d 816, 819 [2d Dept 2024]; *Miller v Appadurai*, 214 AD3d 455, 456 [1st Dept 2023], *lv denied* 40 NY3d 902 [2023]). Further, although plaintiffs' complaint included the libel and other tort causes of action that this court has dismissed, the primary thrust of the action is to address the parties' dispute relating to the leadership of the MCC rather than to simply burden defendants with legal costs. As such, the action, at its core,

relates to purely private matters (*see Abbey Family Trust No Four v Matthews*, 217 AD3d 1158, 1162 [3d Dept 2023]) and defendants are not entitled to attorney's fees pursuant to Civil Rights Law § 70-a (1) (a) (*see Tsamasiros*, 232 AD3d at 819).

### ***Preliminary Injunction***

“The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor” (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005] *see* CPLR 6301; *XXXX, L.P. v 363 Prospect Place, LLC*, 153 AD3d 588, 591 [2d Dept 2017]). “The purpose of a preliminary injunction is to maintain the status quo pending determination of the action” (*see Automated Waste Disposal, Inc. v Mid-Hudson Waste, Inc.*, 50 AD3d 1072, 1073 [2008]).

For the reasons discussed above with respect to the standing issue and with respect to the declaratory judgment and breach of bylaws causes of action, plaintiffs, have adequately demonstrated that defendants have not properly assumed leadership of the MCC, and thus demonstrated a likelihood of success on the merits (*see Kelley v Garuda*, 36 AD3d 593, 596 [2d Dept 2007]). Although defendants have demonstrated the existence of factual issues relating to plaintiffs' control of the MCC, the existence of factual issues does not preclude a finding of a likelihood of success on the merits because conclusive evidence is not required at this stage of the litigation (*see Jones v State Farm Fire & Cas. Co.*, 189 AD3d 1565, 1567 [2d Dept 2020]; *Vanderbilt Brookland, LLC v Vanderbilt Myrtle, Inc.*, 147 AD3d 1104, 1106 [2d Dept 2017]; *Ruiz v Meloney*, 26 AD3d 485, 486-487 [2d Dept 2006]; *cf. Kenner v Balkany*, 219 AD3d 1504, 1506 [2d Dept 2023]). An

opportunity for defendants to shift the balance of power and wrest control of the MCC from Akram and the trustees aligned with him warrants a finding of irreparable injury (*see Yemini v Goldberg*, 60 AD3d 935, 937 [2d Dept 2009]; *Cooperstown Capital, LLC v Patton*, 60 AD3d 1251, 1253 [3d Dept 2009]; *Vanderminden v Vanderminden*, 226 AD2d 1037, 1041 [3d Dept 1996]). In view of this potential loss to plaintiffs, and the absence of prejudice to defendants, other than delaying their authority over the MCC if they succeed on the merits of this action, warrants a finding that the balance of equities weighs in favor of plaintiffs (*see Yemini*, 60 AD3d at 937; *Cooperstown Capital, LLC*, 60 AD3d at 1253; *Vanderminden*, 226 AD2d at 1042).

Nevertheless, the court finds that the language of the TRO was overbroad. In this regard, assuming that the 2018 Bylaws apply, plaintiffs' proof that the defendant trustees were removed as trustees by a vote of two thirds of the trustees as required by the 2018 Bylaws (2018 Bylaws at page 10) is conclusory. The only proof submitted regarding the vote is a sheet of paper listing the names of persons purported to be the trustees and the signatures of those purporting to vote and plaintiffs have provided no proof that these persons were all the trustees of the MCC at the time of the removal vote (*see* NYSCEF Doc No. 3). Additionally, under the 2018 Bylaws, members in the MCC could only be terminated by a two-thirds vote of the "Board of Elders" and the "General Assembly" consisting of the MCC's members (2018 Bylaws at pages 3-4, 7-8) and plaintiffs have submitted no proof of any such actions to terminate the membership of the defendants. While plaintiffs also allege that barring defendants from the MCC is warranted because defendants "nearly resorted to violence," these assertions are only conclusory stated and

do not include any unambiguous statements that defendants were directly involved in any actual violence or inciting such. Plaintiffs have thus failed to show grounds for barring defendants from entering onto the MCC's property, worshipping and participating in its events as members and trustees and this court sees no basis for doing so as long as defendants participate in a respectful manner and limit discussions regarding the governance to properly called meetings for such purposes (*cf. Ansonia Assoc. Ltd. Partnership v Ansonia Tenants' Coalition*, 253 AD2d 706, 706-707 [1st Dept 1998]).

Finally, although the posting of an undertaking is mandatory upon the grant of a preliminary injunction (CPLR 6312 [b]), this court finds a limited undertaking of \$2,000 is appropriate given that the MCC is a not-for-profit entity and given that the potential for defendants suffering any significant economic injury or damages as a result of the preliminary injunction appears to be remote (*see Matter of Raritan Baykeeper Inc. v City of New York*, 42 Misc 3d 1208[A], 2013 NY Slip Op 52258[U], \*12 [Sup Ct, Kings County 2013]; *see also Daytop Vil. v Consolidated Edison Co. of N.Y.*, 61 AD2d 933, 934-935 [1st Dept 1978]).

This constitutes the Decision and Order of the Court.

ENTER

  
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Honorable Carolyn E. Wade, J.S.C.

**HON. CAROLYN E. WADE**  
**JUSTICE OF THE SUPREME COURT**