

**Congregation Machne Ger v Berliner**

2025 NY Slip Op 33982(U)

October 14, 2025

Supreme Court, Kings County

Docket Number: Index No. 510874/2022

Judge: Peter P. Sweeney

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

Index No.: 510874/2022

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Mot. Seq. No.: 1 & 2

CONGREGATION MACHNE GER, By members, and  
DAVID OLEWSKI, member and director, YEHUDA  
COHEN, member and director, IZADORE DANZIGER,  
member and director,

Plaintiffs,

-against-

**DECISION/ORDER**

DAVID BERLINER, a/k/a DAVID MENDEL  
BERLINER, DAVID MENDEL BERLINER, a/k/a/1  
through 3 all whose true names are unknown,  
ATTORNEY GENERAL OF THE STATE OF NEW  
YORK, statutory notice defendant,

Defendants.

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The following papers, which are e-filed with NYCEF as items 152-161, 166-170, 173-182, were read on these motions:

In this action involving a dispute between two factions of the Congregation Machne Ger (the "Congregation"), each claiming the right to control the Congregation, as well as a summer camp owned by the Congregation, the defendants move for a preliminary injunction granting them exclusive access to, and control over, the summer camp and enjoining the plaintiffs from having any access to and control over the camp (Motion Seq. #1).

In Motion Seq. #2, the plaintiffs seek an order pursuant to CPLR 6401 appointing a temporary receiver over the assets of the Congregation, including the camp, together with an order directing the defendants to account to the Court, the receiver, and/or the plaintiffs for all monies received from operation of the Camp, and requiring the defendants to deposit all such monies with the receiver.

The motions are consolidated for disposition.

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[\* 1]

## BACKGROUND

The two competing factions of the Congregation are the "Cohen Faction" (plaintiffs) and the "Berliner Faction" (defendants). The dispute has persisted since 2019, when control over the Congregation was awarded to the defendants by order of the Sullivan County Supreme Court. That order was later reversed by the Appellate Division, Third Department.

The Congregation, a religious corporation, was founded in 1972 with funds solicited from the Ger community. One of its principal purposes was to provide a summer camp for children of the Ger community. Plaintiff Yehuda Cohen was one of the incorporators of the Congregation and a founder of the Camp.

While this action was pending in Sullivan County, Justice Schick issued an order granting control of the Congregation to the Berliner Faction, to the exclusion of the Cohen Faction, until another corporate election was held. As noted above, this order was reversed by the Third Department.

In 2021, the Berliner Faction began leasing the Camp to a third-party organization, Hamaspik of Kings County, Inc. ("Hamaspik") and apparently intends to continue doing so. On May 12, 2022, this Court issued a Temporary Restraining Order ("TRO") at defendants' request, granting the Berliner Faction exclusive access to the Camp and ordering the plaintiffs to vacate and refrain from interference. Since then, the Berliner Faction has maintained control of the Camp.

The Cohen Faction opposes defendants' motion for a preliminary injunction, contending that defendants have not shown a likelihood of success on the merits of their claim to be the valid Board of the Congregation, have not demonstrated irreparable injury, and that the balance of equities favors plaintiffs. They argue that defendants' claims rest on alleged board meetings and elections in 2017 and 2020, which are invalid because the purported participants were not members under Religious Corporations Law § 195. Plaintiffs also maintain that Rabbi Cohen, as an incorporator and named Trustee in the Congregation's Certificate of Incorporation, is a statutory member who, as the sole surviving Trustee, had the authority to properly fill board vacancies and did so on January 31, 2022. Plaintiffs further claim that the new board Rabbi

Cohen selected were re-elected on February 8, 2022. Plaintiffs therefore assert that they, not defendants, rightfully control the Congregation and the Camp.

The Cohen Faction further contends that defendants will not suffer irreparable injury if the preliminary injunction is denied, as their interest is limited to rental income, which is compensable in damages. Plaintiffs argue they will suffer irreparable injury if the injunction is granted, since the unique experience of operating a summer camp for Ger children cannot be replaced by money damages.

Plaintiffs also emphasize that prior to this dispute, Mr. Berliner served only as Camp administrator under the direction of the Congregation's Trustees, including Rabbi Olewski, and that defendants' present control stems solely from the now-vacated order of Justice Schick.

With respect to Motion Seq. #2, plaintiffs seek appointment of a receiver, alleging that the Congregation's sole asset is being "lost, materially injured or destroyed" by being used solely for rental income instead of for its intended charitable purpose. They allege that the defendants have refused to provide an accounting, mismanaged the property, approved illegal construction resulting in violations and the loss of a certificate of occupancy, and incurred tax liabilities by losing the Camp's tax-exempt status.

## DISCUSSION

### Motion Seq. #1

To obtain a preliminary injunction, a movant must show: (1) likelihood of success on the merits; (2) irreparable injury absent the injunction; and (3) that the balance of equities favors the movant (*Aetna Co. v. Capasso*, 75 N.Y.2d 860, 862 (1990)). The burden must be met by "clear and convincing evidence" (*East Coast Drilling, Inc. v. Total Structure Enterprises, Inc.*, 106 A.D.3d 688 (2d Dept. 2013)).

Defendants' claim that they will likely succeed on the merits rests on their assertion that they are the duly elected Board. Plaintiffs, however, raise substantial challenges to the validity of the elections that the defendants claim put them in control, citing failures to satisfy the

membership criteria of Religious Corporations Law § 195. The Third Department's reversal of Justice Schick's order further undermines defendants' position. In contrast, plaintiffs rely on Rabbi Cohen's undisputed status as an incorporator and Trustee, and his lawful actions under RCL § 199 and NPCL § 601 to fill vacancies.

Given the sharply contested facts and unsettled legal issues regarding governance of the Congregation, defendants have not demonstrated by clear and convincing evidence a likelihood of success. Where material facts are disputed, preliminary injunctive relief is not warranted (see *Doe v. Axelrod*, 73 N.Y.2d 748 (1988)). Moreover, the plaintiff failed to demonstrate irreparable injury absent a preliminary injunction because the Congregation can be adequately compensated by money damages (see *Benaim v. S2 Corona, LLC*, 214 A.D.3d at 761, 186 N.Y.S.3d 236; *Trump on the Ocean, LLC v. Ash*, 81 A.D.3d 713, 716, 916 N.Y.S.2d 177).

For the above reasons, Motion Seq. #1 is denied.

## **Motion Seq. #2**

The appointment of a temporary receiver is a drastic remedy to be granted only in a clear case upon an extreme showing of necessity (*Nelson v. Nelson*, 99 A.D.2d 917, 918, 473 N.Y.S.2d 40, 41 (3d Dep't 1984)). The remedy must be exercised with "extreme caution" because it deprives a party of possession without an adjudication on the merits (*Hahn v. Garay*, 54 A.D.2d 629, 387 N.Y.S.2d 430 (1st Dep't 1976)). The applicant has the burden to show by clear and convincing evidence that the property is in danger of being "lost, materially injured or destroyed" (CPLR § 6401(a); *McBrien v. Murphy*, 156 A.D.2d 140, 548 N.Y.S.2d 186 (1st Dep't 1989)). Plaintiffs fail to meet this burden.

First, plaintiffs have not demonstrated that the Camp is in imminent danger of being "lost, materially injured or destroyed". Their allegations of financial mismanagement are speculative and unsupported by evidence of waste or dissipation.

Second, the Camp is apparently a profitable, ongoing business. Courts are reluctant to appoint receivers in such circumstances (*Martin v. Donghia Associates, Inc.*, 73 A.D.2d 898, 424 N.Y.S.2d 222 (1st Dep't 1980)). In *B.D. and F. Realty Corp. v. Lerner*, 232 A.D.2d 346, 648

N.Y.S.2d 596 (1st Dep't 1996), where property generated income and was not in danger of destruction, the Courts held that the appointment of a receiver was not warranted. The same is true here..

Third, plaintiffs' allegations of illegal construction, loss of certificate of occupancy, and significant tax liability are unsubstantiated.

Finally, plaintiffs' request for an accounting is premature. Until plaintiffs establish their claim to rightful control of the Congregation, no accounting can lie (*Hines v. Metro. Baptist Church, Inc.*, 51 A.D.2d 713, 380 N.Y.S.2d 229 (1976), citing *Robinson v. Staal*, 43 A.D.2d 826, 351 N.Y.S.2d 406 (1st Dept. 1974)).

Accordingly, Motion Seq. #2 is denied.

For the foregoing reasons, it is hereby

**ORDERED** that Motion Seq. #1 and Motion Seq. #2 are DENIED.

This constitutes the decision and order of the Court.

Dated: October 14, 2025



**PETER P. SWEENEY, J.S.C.**

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

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