

SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. JOSEPH P. DORSA IAS PART 12
Justice

- - - - - x

SOOK HEE LIM, as trustee, and BOARD OF
TRUSTEES OF KOREAN CHURCH OF ETERNAL
LIFE IN NEW YORK,

Index No.: 24750/04

Plaintiffs,

Motion Date: 5/25/05

- against -

Motion No.: 21

PONG KON YANG and SEUNG JIN LEE,

Defendants.

- - - - - x

The following papers numbered 1 to 9 on this motion:

	Papers Numbered
Defendant's Notice of Motion-Affid(s)-Exh(s) and Memorandum of Law	1-3
Plaintiff's Notice of Cross-Motion and Answering Affidavit(s)-Exh(s) and Memorandum of Law	4-8
Defendant's Reply Affirmation	9

By notice of motion, defendants seek an order of the Court, dismissing the complaint and vacating all provisional relief granted to plaintiffs.

Plaintiffs oppose and cross-move for an order allowing them to amend the complaint pursuant to CPLR §3025, and defendants reply.

This is an action brought by plaintiff, Sook Hee Lim, individually, as "trustee" and purportedly on behalf of the Board of Trustees of the Korean Church of Eternal Life (herein after KCEL) of New York to preclude defendant Seung Jin Lee from serving as Pastor of KCEL.

The KCEL was formed as a corporation pursuant to Article 8 of the Religious Corporations Law of New York in August of 1982, and amended by additional duly adopted articles of incorporation in March of 1985. Plaintiff maintains that the KCEL adopted a constitution in August 1982. The only copy of said constitution, however, is dated May 1985. Defendant characterizes the KCEL constitution as "suspect" and maintains that it was never duly ratified by the congregation.

Defendant Lee maintains that she served as "a" pastor at the request of former Pastor Lim on numerous occasions from 2001 to 2004, a claim which plaintiff denies. Pastor Lim died on June 1, 2004. Plaintiff Lim, is the widow of the founding Pastor, the Rev. Min Il Lim.

On June 27, 2004, a two-thirds (2/3) majority of the congregation's present members met and elected Seung Jin Lee as their new pastor. Defendant admits that plaintiff, Sook Hee Lim, did not participate in the election on June 27, 2004.

On or about October 19, 1983, the KCEL became a local member church of the Korean Presbyterian Church of America (herein after KPCA). Initially, the KCEL was part of the Eastern Presbytery of the KPCA. Since September of 2003, the KCEL has been a member of the Northeast Presbytery of the KPCA, when the KPCA went through a reorganization.

Plaintiff maintains that defendant Seung Jin Lee, a female, may not serve as Pastor of the KCEL, as it is violative of the constitution of the KPCA, their governing body.

Both parties concede that KCEL is subject to the jurisdiction and control of the KPCA.

Defendants argue that the KPCA constitution is consistent with Article 8 of the New York Religious Corporation Law and that accordingly, no "trustee" of any church incorporated by such statute has the power to "call, settle, or remove a minister"; and that "it is the congregation which selects [their] pastor." New York Religious Corporation Law, Article 8, §§169, 170.

Moreover, defendants argue that pursuant to Article 8, plaintiff lacks the capacity as a purported "trustee" to bring suit on behalf of the church (see, Silver v. Pataki, 96 N.Y.2d 532 (2001); Community Board 7 v. Schaffer, 84 N.Y.2d 148 (1994)), and that the complaint should therefore be dismissed.

Plaintiffs respond that defendants failed to raise the

argument of plaintiffs' lack of capacity to sue in a timely fashion (CPLR §3211(a)(3)), and have therefore waived their right to assert such a defense. Nevertheless, plaintiffs also cross-move pursuant to CPLR §3025 to be allowed to amend their complaint to add the Northeast Presbytery of the KPCA as a plaintiff.

Defendants also argue that the complaint should be dismissed because the Court lacks jurisdiction to determine the issue of whether or not the KCEL congregation may elect a female as their pastor, because to do so would violate the Establishment Clause of the First Amendment to the United States Constitution. See, Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, 344 U.S. 94, 116 (1952). When religious doctrine is involved, defendant argues, the courts may not intervene to interpret such issues. See, Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojovich, 426 U.S. 696 (1976).

Plaintiff argues that the courts are empowered to decide church disputes "so long as they apply neutral principles of law in rendering their decision." St. Matthew Church of Christ, Disciples of Christ, Inc. v. Creech, 196 Misc. 2d 843 (Sup. Ct. Kings Co. 2003); Grove Missionary Baptist Church v. Noble, 2 Misc. 3d 1010A (Sup. Ct. Erie Co. 2004). Moreover, plaintiff argues, "that ecclesiastical matters such as a church's determination of a clergyman can be decided by a court if the management of the church's temporalities will be settled by the determination of such issues" St. Matthew Church of Christ, Disciples of Christ, Inc., 196 Misc. 2d at 856, citing Rector, Churchwardens & Vestrymen of the Church of the Holy Trinity v. Melish, 4 A.D.2d 256, 259 (2d Dep't. 1957).

Upon all of the foregoing, the motion and cross-motion are decided as follows:

It is well established that certain grounds for dismissal are waived if not raised by the defense in a motion prior to the service of their answer or in the answer itself (State v. Wolowitz, 96 A.D.2d 47 (2d Dep't. 1983), CPLR §3211(e). The defense of lack of capacity to sue is one such defense. (Erljur Associates v. Weissman, 134 A.D.2d 321 (2d Dep't. 1987) (appellants waived any contention that the plaintiff... lacked the capacity to sue... by their failure to assert that defense in a motion before service of their answer or in the answer itself); (Central Dover Development Corp. v. Town of Dover, 213 A.D.2d 367 (2d Dep't. 1995)(town waived the defense that plaintiff was not a proper party by failing to raise this claim in its answer or in a pre-answer motion to dismiss the complaint). Accordingly, the

defendant's failure to raise the defense that plaintiffs lacked the capacity to sue either by pre-answer motion or in the answer itself, effectively precludes them from raising the defense at this time, and that portion of the motion to dismiss is denied.

The United States Supreme Court has held that "[t]he rule of action which should govern the civil courts... is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." Serbian Eastern Orthodox Diocese for the United States & Canada v. Milivojevich, 426 U.S. 696, 710 (1976) "...[R]eligious freedom encompasses the 'power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" Id. at 722. Finally, "the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government..." Id. at 724.

Defendants argue that to resolve this dispute, the Court would have to interpret matters of religious doctrine, that is the definitions contained in Chapter 5 of the KPCA Constitution and whether or not in electing Jeung Jin Lee as their Pastor, the congregation has violated the tenets of that constitution. In the KPCA Constitution, Article 22 of Chapter 5, defines a "Pastor"; Article 23 of Chapter 5 lists the Qualifications of a Minister, including a requirement that a minister "must be a male of 27 years of age or older"; Article 24 of Chapter 5 describes the duties of a Pastor to "his" congregation; Article 25 of Chapter 5 describes a Senior Pastor as one who is called to a local church and installed by the Presbytery; Article 26 of Chapter 5 describes the procedures for the calling of a senior pastor, which is a two-thirds (2/3) vote of the present members of the congregation; and Article 27 of Chapter 5 provides for approval of the Call (of the senior pastor) by the Presbytery by petition to the Presbytery.

The members of the KCEL congregation met on June 27, 2004, and by a two-thirds (2/3) majority elected Seung Jin Lee as their Senior Pastor. The issue then is whether or not the call of Seung Jin Lee, as a female senior pastor, will be or can be approved by the hierarchy of the KCEL, that is the Northeastern Presbytery of the KPCA.

It is clear to this Court that to make such a determination,

the Court would be called upon to engage in an impermissible interpretation of church doctrine. (See, Serbian, supra.; Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969)). That is, that the court would become the arbiter of who should be allowed to bring the body's message of faith to the local congregation.

Plaintiff's reliance on the line of cases such as Langford v. Roman Catholic Diocese of Brooklyn, 177 Misc. 2d 897 (Sup. Ct. Kings Co. 1998), St. Matthew Church of Christ, Disciples in Christ, Inc. v. Creech, 196 Misc. 2d 843 (Sup. Ct. Kings Co. 2003), and First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States, 62 N.Y.2d 110 (1984), for the argument that this Court is empowered to decide this matter, is misplaced.

The seminal case which stands for the principle that the civil courts in New York may intervene, and apply neutral principles of law to resolve "religious" disputes is First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States, 62 N.Y.2d 110 (1984). The Court makes clear, however, that such intervention is limited to property ownership disputes, such as the one involved in First Presbyterian, and may be entertained only where such disputes do not require resolution "of underlying controversies over religious doctrine." Id. at 119. In First Presbyterian, the local church held sole title to the property in question, and had withdrawn from membership in the hierarchical organization without ever ceding the property to the denominational church hierarchy. Id. at 120. The Court, then, was able to apply neutral principles of law with a focus on the language of the deeds, the terms of the local church charter, and the state statutes governing the holding of church property to resolve the issue. Id. at 122.

In St. Matthew Church of Christ, Disciples of Christ, Inc. v. Creech, 196 Misc. 2d 843 (Sup. Ct. Kings Co. 2003), the Court applied neutral principles of law to a controversy which appeared to involve the issue of the selection of a pastor for the congregation, but which also involved control and use of the church property, or the church's "temporalities." 196 Misc. 2d at 855, citing Rector, Churchwardens & Vestrymen of Church of the Holy Trinity v. Melish, 4 A.D.2d 256, 259 (1957). The Court in St. Matthew, determined that the local church was "congregational" and "independent" as opposed to "hierarchical," and was therefore not subject to the control of the national organization of which it was merely a member. 196 Misc. 2d at

852. In this instance, the issue before the Court does not involve a matter of determining property rights or ownership. Moreover, both parties agree that KCEL is part of hierarchical organization subject to the rules and governance of the KPCA.

New York's adoption of the neutral principles approach, which plaintiff urges this Court to apply, relates only to issues of property where the courts can focus on the language of deeds, terms of the local charter, the state statutes governing the holding of church property and the provisions of the general church concerning the ownership and control of such property. Even in those circumstances, special care should be taken to examine each of these documents in secular terms, and not in reliance on religious precepts to determine whether the parties intended a particular result. Trustees Diocese of Albany v. Trinity, 250 A.D.2d 282 (3d Dep't. 1999).

Accordingly, that portion of defendants' motion which seeks dismissal of the complaint on the grounds that this Court is precluded from considering plaintiff's claims by the Establishment Clause of the First Amendment of the United States Constitution is granted.

Plaintiff's cross-motion to amend the complaint is denied as moot. By previous order of this Court, an evidentiary hearing was scheduled as part of plaintiff's request for interim relief. On May 25, 2005, the parties stipulated to adjourn said hearing to June 29, 2005. In light of this Court's decision herein, the previous order directing that a hearing be held is vacated. All interim relief previously granted is hereby vacated.

It is further

ORDERED, that the motion to dismiss is granted and the complaint is dismissed, with costs and disbursements to defendant as taxed by the Clerk of the Court; and, it is further

ORDERED, that the Clerk of the Court is directed to enter judgment accordingly.

Dated: Jamaica, New York
June 20, 2005.

JOSEPH P. DORSA
J.S.C.