

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT — CHANCERY DIVISION

CANAAN PRESBYTERIAN CHURCH, )  
an Illinois Not-For-Profit Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
YONG SAM RHEE and unknown )  
additional Defendants, as their interests, )  
if any, may be determined, )  
 )  
Defendants. )

No. 07 CH 05052

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendant Yong Sam Rhee’s motion to dismiss Plaintiff Canaan Presbyterian Church’s verified complaint under 735 ILCS 5/2-615 and 735 ILCS 5/2-619. For the reasons stated below, the motion to dismiss is denied.

I. BACKGROUND

Caanan Presbyterian Church (“CPC”) is a religious congregation located in Glenview, Illinois. It was incorporated as an Illinois not-for-profit corporation for the purpose of “hold[ing] religious exercise based on the Constitutions and Doctrines of the United Presbyterian Church in the U.S.A.” Respon. Exhibit A.<sup>1</sup> From the Church’s inception in 1977 until February 2007, Defendant Yong Sam Rhee (“Pastor Rhee”) acted as the pastor of CPC. CPC is a member of the Presbyterian Church (U.S.A.) (the “Presbyterian Church”).

The Presbyterian Church has a constitution (“Constitution”) which is divided into two books: the Book of Confessions and the Book of Order. The Book of Order assigns powers to various organizations within the Presbyterian Church. The Constitution establishes that the local

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<sup>1</sup> The United Presbyterian Church in the U.S.A. merged with the Presbyterian Church in the U.S. in 1983 to form the Presbyterian Church (U.S.A.).

governing power of each Presbyterian church be with a body known as the Session. The Session is answerable to the Presbytery, which is in turn answerable to the Synod. In times of need, the Book of Order authorizes the Presbytery to appoint an Administrative Commission to deal with problems arising in churches. On October 5, 2006, the Midwest Hanmi Presbytery (“Presbytery”), of which CPC is a member church, appointed an Administrative Commission to govern CPC. This Administrative Commission was given the full powers of the Session, including the power to manage church property.

On February 12, 2007 the Administrative Commission issued a report concerning Pastor Rhee. The report concluded, *inter alia*, that Rhee was no longer a member of the Presbyterian Church and was thus ineligible to continue performing his pastoral duties at CPC. The findings of the Administrative Commission have been appealed to the Permanent Judicial Commission of the Synod of Lincoln Trails (“Synod”) and a final decision by that body is still pending. In his complaint to the Synod (“Synod Complaint”), Pastor Rhee complains, in part, that the Administrative Commission lacked the necessary business acumen to effectively function as CPC’s Session.

In the complaint filed in this Court, the Plaintiff alleges that Pastor Rhee breached his fiduciary duty by writing unauthorized checks to an independent church and to an entity in China. Plaintiff also alleges that Pastor Rhee refused a demand for an accounting.

The Administrative Commission commenced the present lawsuit on behalf of CPC and asked this Court to grant a temporary restraining order preventing Pastor from writing checks on behalf of CPC and from entering CPC’s property. A temporary restraining order was entered in February 2007. In addition to the temporary restraining order, the complaint seeks: 1) an injunction preventing Pastor Rhee from entering CPC’s premises; 2) an accounting; 3) damages

for breach of fiduciary duty. In response to the complaint, Pastor Rhee file the instant motion dismiss.

## II. RELEVANT LAW

“When the legal sufficiency of all or part of a complaint is challenged by a section 2-615 motion to strike or dismiss, all well-pleaded facts in the challenged portions of the complaint are to be taken as true and a reviewing court must determine whether the allegations of the complaint, when interpreted in the light most favorable to the plaintiff, are sufficient to set forth a cause of action upon which relief may be granted.” *DiBenedetto v. Flora Township*, 153 Ill. 2d 66, 69-70 (1992).

“Section 2-619 affords a defendant a means of obtaining a summary disposition of an action based upon issues of law or easily proven issues of fact.” *Great West Cas. Co. v. Cote*, 365 Ill. App. 3d 100, 104 (1st Dist. 2006). “A section 2-619 motion admits the legal sufficiency of the complaint and raises defects, defenses or other affirmative matter which appears on the face of the complaint or is established by external submissions which act to defeat the plaintiffs claim.” *McElmeel v. Vill. of Hoffman Estates*, 359 Ill. App. 3d 824, 826-827 (1st Dist. 2005).

## III. ANALYSIS

### A. Justiciability

Before the Court may analyze the sufficiency of the complaint, it must first determine whether the matter is properly before it. Pastor Rhee advances three arguments as to why this matter is not properly before the Court. First, he contends that the Court lacks the jurisdiction to hear this case because it cannot resolve the matter without adjudicating ecclesiastical issues. Second, Pastor Rhee argues that the Administrative Commission lacks standing to bring the

present lawsuit on behalf of CPC. Third, he requests that this Court stay proceedings until the Synod renders a final decision on Pastor Rhee's status.

#### 1. Subject-matter Jurisdiction

Pastor Rhee argues that the Court lacks subject matter jurisdiction because it cannot render a decision in this case without deciding matters of Presbyterian doctrine. Generally, courts may not adjudicate matters of church doctrine. *Ervin v. Lilydale Progressive Missionary Baptist Church*, 351 Ill. App. 3d 41, 43 (1st Dist. 2004). However, when property disputes arise within churches, a court may adjudicate issues in those disputes if it can do so utilizing neutral legal principles. *Hines v. Turley*, 246 Ill. App. 3d 405, 418 (2d Dist. 1993) (quoting *Jones v. Wolf*, 443 U.S. 595, 602 (1979)). The neutral principles of law approach allows courts to examine "pertinent church characteristics, constitutions and bylaws, deeds, [s]tate statutes, and other evidence to resolve the matter the same as it would a secular dispute." *Id.* When disputes concerning bylaws and constitutions arise within religious organizations, courts may adjudicate the disputed issues. *See People ex rel. Muhammad v. Muhammad-Rahmah*, 289 Ill. App. 3d 740 (1st Dist. 1997) (holding trial court erred when refusing review of bylaws of religious corporation to determine proper procedure for removing directors).

This dispute will not require the Court to make any ecclesiastical decisions. The first count in the complaint requests an injunction preventing Pastor Rhee from entering onto CPC property. The other two counts concern control over monetary assets. Thus, the instant matter only concerns property. Since courts can apply neutral legal principles in adjudicating property controversies, this matter is within this Court's subject-matter jurisdiction.

## 2. Standing

Next the Court must determine whether the Administrative Commission has the standing to bring the instant matter before this Court. “The standing doctrine assures that issues are presented to a court only by parties who have a sufficient stake in the outcome of the controversy.” *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 482 (1992). “To satisfy the standing requirement, a party must suffer some injury in fact to a legally cognizable interest.” *Nolan v. Hillard*, 309 Ill. App. 3d 129, 138 (1st Dist. 1999).

Pastor Rhee asserts that the Administrative Commission lacks standing to sue on behalf of CPC. He contends that within CPC, there are two entities. One entity is a religious entity that is subject to the laws and hierarchy of the Presbyterian Church while the second entity is a corporate one responsible for CPC’s business operations (e.g. property management). The corporate entity is subject to Illinois law, its articles of incorporation and bylaws, and its board of directors but allegedly is not subject to the laws of the Presbyterian Church. In his view, since this dispute only concerns property, it only involves the corporate entity. In Pastor Rhee’s view, since the corporate entity is the only relevant part of this suit, the Constitution is not controlling. Since the Administrative Commission derives its authority from the Constitution, it would have no authority over the affairs of the corporate entity and therefore cannot sue on its behalf.

Pastor Rhee’s argument fails. CPC’s articles of incorporation state that CPC was incorporated for the purpose of religious exercise under the Constitution of the Presbyterian Church. The Defendant fails to state how the act of incorporating CPC for the express purpose of “religious exercise *under the Constitution of the Presbyterian Church*” (emphasis added) creates two entities, one of which is exempt from the Constitution. Pastor Rhee’s position is contrary to the express language of CPC’s articles of incorporation. Since CPC is governed by

the Constitution, the only remaining issue concerning standing is whether the Administrative Commission is given the authority to bring the instant lawsuit by the Constitution. The Constitution authorizes the Session to manage the property of the church. Since the matter before this Court is a property controversy, the Session would have been authorized to bring this matter before the Court in the course of property management. Therefore, since the Administrative Commission was given the all the powers of the Session, it has properly brought this matter before the Court.

This position finds support in Pastor Rhee's reply brief where he provided this Court with his Synod Complaint. In the Synod Complaint, Pastor Rhee described the chaotic situation which arose at CPC following the appointment of the Administrative Commission. He complained that "the complexity of the Canaan Church's operations requires persons with sufficient business acumen to fulfill responsibilities and duties as a Church session...Due to the unsuitability of the Administrative Commission as a Church Session and its unskillfulness, the Canaan Church was thrown into chaos." Reply Ex. 4 at 6. The Synod Complaint further states that Pastor Rhee established a Steering Committee to handle the church's daily tasks. *Id.* From these facts it can be reasonably inferred that the Session regularly handled tasks that required business acumen. The fact that members of the Session normally require business acumen leads to the conclusion the responsibilities of the session included business matters, and not just spiritual matters. In this Court's view, this supports the conclusion that even if CPC has two entities, both are governed under the Book of Order, by the Session.

In sum, since CPC is a religious congregation which incorporated for the purpose of holding religious exercise based on the Constitution, and it has voluntarily joined and continues

to hold membership in the Presbyterian Church CPC has made no effort to withdraw itself from the Presbyterian Church. Therefore, it is bound by the laws of that church.

### 3. Request to Stay Proceedings

Next, this Court must determine whether to stay proceedings pending adjudication by the Synod. Pastor Rhee argues that since the issues awaiting decision in this Court are also pending before the Synod, the Court must stay proceedings until the Synod renders its decision.

This Court is not required to stay proceedings until the highest judicial authority within the Presbyterian Church renders its decision before deferring to the judgment already made by the Administrative Commission. The Appellate Court confronted a similar situation in *St. Mark Coptic Orthodox Church v. Tanios*, 213 Ill. App. 3d 700 (2d Dist. 1991). In *Tanios*, two factions of a local Coptic Orthodox Church were involved in a controversy over the control of church property. *Id.* The Coptic Orthodox Church has a hierarchical governing structure. *Id.* Both parties agreed that the Holy Synod was the highest judicial body within the Coptic Orthodox Church. *Id.* at 717. The Pope of the Coptic Orthodox Church made a decision regarding the validity of local church bylaws which was on appeal to the Holy Synod at the time the case was heard. *Id.* at 716-18. The Appellate Court found that mandatory deference to internal church decisions applies even when the decision is on appeal to a higher judiciary body. *Id.* at 718.

Pastor Rhee's present situation is analogous to that of the defendants in *Tanios*. A decision within the Presbyterian Church has been made by the Administrative Commission. That decision is currently on appeal to the Synod. The Appellate Court held that principles of deference to internal church decisions apply even to church decisions not made by the highest judicial body. Thus, this Court can defer to, and potentially enforce the decisions made by, the Administrative Commission when it acts as the governing body of CPC.

Additionally, in *Tanios* the court noted that the defendants were free to continue their appeal to the highest judicial body. *Id.* Similarly, adjudication by this Court on the matters currently before it will not be an impediment to the continuation of Pastor Rhee's appeal to the Synod. Therefore, since this Court may defer to the adjudications of the Administrative Commission, it is not required it stay proceedings.

## B. Sufficiency of the Complaint

Pastor Rhee argues that the second and third counts of the complaint are not properly pled. First, he argues that in Count III, which pled a breach of fiduciary duty, the plaintiffs actually pled constructive fraud. In his view, since the complaint alleges fraud, it is not pled with sufficient specificity. Second, Pastor Rhee argues that Count II, which pled an accounting, is insufficiently pled because despite allegations of a demand, no demand was actually made on Pastor Rhee.

### 1. Breach of Fiduciary Duty

This Court must first address whether breach of fiduciary duty has been properly pled. In order to plead a cause of action for breach of fiduciary duty, one must allege "(1) a fiduciary duty on the part of the defendant, (2) a breach of that duty, (3) an injury, and (4) a proximate cause between the breach and the injury. *Estate of Lis v. Kwiatt & Rueben, LTD*, 365 Ill. App. 3d 1, 8 (1st Dist. 2006) (citing *Prime Leasing, Inc. v. Kendig*, 332 Ill. App. 3d 300, 313 (1st Dist. 2002)). In its complaint CPC alleges the following: (1) Rhee was a corporate officer of CPC; (2) as a corporate officer, Pastor Rhee owed a fiduciary duty to CPC; (3) Pastor Rhee breached his duty by improperly sending \$100,000 to China and by depositing money into an account of an independent Church without authority; (4) that due to Pastor Rhee's actions CPC has suffered damages, including dissipation of assets. (Compl. ¶¶ 29-32). Plaintiffs have alleged that a

fiduciary duty existed, that the duty was breached, and that the breach caused damages. Therefore Plaintiff have adequately pled a breach of fiduciary duty.

Pastor Rhee argues that the Plaintiff's cause of action is actually one of constructive fraud because it alleges breach of fiduciary duty for personal gain. However, the Complaint contains no allegation that Pastor Rhee sought personal gain. The Complaint merely alleges that Pastor Rhee had used CPC's assets for an improper purpose. (*Id.* at ¶ 23). Therefore, the complaint has properly alleged a cause of action for breach of fiduciary duty.

## 2. Accounting and Constructive Trust

Next, this Court must determine whether the plaintiffs have properly pled a cause of action for an accounting. To sustain an action for an accounting in equity, a complaint must allege the absence of an adequate remedy at law and one of the following: (1) a breach of a fiduciary relationship between the parties; (2) a need for discovery; (3) fraud; or (4) the existence of mutual accounts which are of a complex nature. *People ex rel. Hartigan v. Candy Club*, 149 Ill. App. 3d 498, 500-501 (1st Dist. 1986). In cases of breach of fiduciary duty, it is not necessary to allege that there is no remedy at law. *Id.* Since it has already been established that the Plaintiff has adequately alleged a breach of a fiduciary relationship, Plaintiff has adequately pled a claim for equitable accounting.

Pastor Rhee argues that the plaintiff's request for an accounting should not be granted because a demand was not made. However, a demand for an accounting is not one of the elements required for pleading equitable accounting. *Id.*

IV. ORDER

Pastor Rhee's motion to dismiss is hereby denied.

Dated: \_\_\_\_\_

Entered: \_\_\_\_\_

**ENTERED**  
JUDGE JAMES R. EPSTEIN-1783  
NOV 02 2007  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL  
DEPUTY CLERK  
James R. Epstein, Judge 1783