

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

EVANGELICAL LUTHERAN CHURCH	:	February Term 2008
OF THE REDEEMER,	:	
	:	
Plaintiff,	:	No. 3906
	:	
v.	:	
SOUTHEASTERN PENNSYLVANIA	:	COMMERCE PROGRAM
SYNOD OF THE EVANGELICAL	:	
LUTHERAN CHURCH IN AMERICA,	:	Control Number 031093
Defendant.	:	
	:	
	:	

ORDER

AND NOW, this 22nd day of September, 2008, upon consideration of Defendant Southeastern Pennsylvania Synod of the Evangelical Lutheran Church in America's Preliminary Objections to Plaintiff's complaint, Plaintiff's response in opposition, Memoranda, all matters of record and in accord with the attached opinion, it hereby is **ORDERED** that the objection to the court's subject matter jurisdiction is **sustained** and the complaint is dismissed.

BY THE COURT,

ARNOLD L. NEW, J.

ministry and mission audit with defendant's director of mission development. On November 22, 2007, plaintiff delivered to Synod's office all documents requested.

On December 26, 2007, plaintiff reported to defendant the successes of its congregational worship services and ministries in December. On January 24, 2008, plaintiff's counsel wrote to the Bishop and the Synod Trustees requesting an immediate end to synodical administration and a review of plaintiff's position requesting the call of a certain pastor. No response was received.

On February 12, 2008, the Bishop wrote to plaintiff's council, notifying it that the business of Redeemer Lutheran Church must immediately cease and that Redeemer would be closed. Plaintiff was instructed to refrain from acting as a church council, to turn over all bank records, all financial and administrative documents, the keys to the church property and cooperate with defendant to wind down church affairs. On the same date, the Bishop wrote to all congregants stating that plaintiff's council has no power to act, that synodical administration was in place and the Trustees would take charge of plaintiff's property and plaintiff would wind down and close. On February 24, 2008, the Bishop and others entered the property with a locksmith with the intent to take control of the property. Access was denied and plaintiff instructed the defendant to leave the property.

In February 2008, plaintiff instituted the instant action against defendant purporting to state a claim for breach of implied contract-control of church property (count I), breach of implied contract-control of congregation (count II), breach of express contract – control of church property (count III), breach of express contract- control of the congregation (count IV) and for preliminary and permanent injunction (count V).

Defendants have now filed preliminary objections asserting lack of subject matter jurisdiction, lack of capacity to sue, failure to conform to the rules of court and legal insufficiency.

DISCUSSION

Plaintiff's complaint challenges actions taken by defendant, a religious organization and its members or employees regarding the decision to place plaintiff under "involuntary synodical administration". According to the complaint, the Synod constitution provides that if any congregation has disbanded, or if the members of a congregation agree that it is no longer possible for it to function as such, or it is the opinion of Synod Council that the membership of the congregation has become so scattered or so diminished in numbers as to make it impractical for such congregation to fulfill the purposes for which it was organized or that it is necessary to protect the congregation's property from waste or deterioration, Synod Council, itself or through trustee's appointed by it, may take charge and control of the property of the congregation to hold, manage and convey it on behalf of the Synod.¹ This has been referred to in the complaint as Synodical administration.

Civil courts presented with a controversy involving the internal governance or administration of a religious association must be sensitive to the potential constitutional issues at stake. To discourage interference with the free exercise of religion by civil courts, the United States Supreme Court has embraced a deference rule.²

¹ Complaint ¶ 20.

² See Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952) and Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed. 2d 151 (1976).

The Pennsylvania Supreme Court acknowledges the deference rule and emphasizes that “the right to practice one’s belief and worship is so deep a root of our constitutional culture that a court, even with the best intentions, can be no more than a clumsy intruder into the most delicate and sensitive areas of human life.”³ The Supreme Court was however careful to draw boundaries for the rule of deference when it stated that not all disputes among members of a congregation are doctrinal. Instead, “some are simply disputes as to meaning of agreements on wills, trusts, contracts and property ownership.”⁴ As to these non doctrinal issues the “neutral principles approach” evolved. These issues involve civil law and are thus amendable to judicial review by civil courts because they “are not predicated on any religious doctrine.”⁵

In Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church,⁶ the Supreme Court decided a property issue of whether a church/nonprofit corporation that ended its affiliation with the United Presbyterian Church of America retained the property it owned prior to its affiliation with the United Presbyterian Church. By applying the neutral principles of trust law, the court concluded that the corporation had never shown the requisite intent to convey the property to the church.

³ Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church, 507 Pa. 255, 259, 489 A.2d 1317 (1985).

⁴ Id.

⁵ Id. at 1320-21.

⁶ 507 Pa. 255, 259, 489 A.2d 1317 (1985).

In In re the Lord's New Church Which is Nova Hierosolyma Appeal of Feodor Pitcairn, et. al.⁷, the Pennsylvania Commonwealth Court concluded that a civil court could adjudicate under nonprofit corporation law whether there had been an improper transfer of corporate funds to a church by members of a board of a nonprofit corporation that had been created to promote and maintain a Swedenborgian church. The propriety of such a transfer of funds would not require a court to determine any ecclesiastical issue and was a pure question of corporate law.

In contrast, where issues are inextricably entangled with internal rules of the churches, the courts have applied the deference rule. In re The Greek Orthodox Kathedrikos of Saint George,⁸ petitioners alleged that they were improperly removed as elected members and officers of the parish council, and that they were improperly replaced by respondents due to the improper actions of the parish council leader. The court found that the election issues were inextricably enmeshed within the church hierarchy and as such, were not reviewable by the court. It concluded that the deference rule required dismissal of the petition.

Here, plaintiff alleges that defendant breached its contract with plaintiff by imposing and/or forcing an “involuntary Synodical administration” on the church, attempting to assume administration of its congregation, attempting to take charge and control of plaintiff’s church property valued at 1.5 million and assume ownership, unilaterally strip plaintiff of its congregational and council rights, block the call of a qualified pastor and close the church.

⁷ 817 A.2d 559, 564 (Pa. Cmmw. 2003) aff'd in part and rev'd in part, (as to the voiding of the 6/23/99 Special Meeting of the Board of Directors), 573 Pa. 479, 826 A.2d 863 (2003)).

⁸ 2005 Phila. Ct. Com. Lexis 600 (2005).

The thrust of the complaint does not concern the neutral principles regarding ownership of property after closure. Rather, plaintiff complains about defendant's internal decision to close plaintiff's existing congregation due to alleged scattered and diminished attendance and financial strength making it allegedly impractical to fulfill the congregation's mission. The property control question is the result of defendant's decision which is intimately linked to defendant's internal criteria by which it decides such concerns. For civil courts to analyze whether such actions of defendant were improper would entail inquiry into the criteria used to decide the question and is not receptive to application of neutral principles of law. Accordingly, defendant's preliminary objection is sustained and this matter is dismissed for lack of subject matter jurisdiction.

CONCLUSION

For the foregoing reasons, defendant's preliminary objection to this court's subject matter jurisdiction is sustained and the complaint is dismissed.⁹

BY THE COURT,

ARNOLD L. NEW, J.

⁹ The court has not addressed the merit of defendant's other preliminary objections.