AGREEMENT TO SUBMIT TO ARBITRATION

WE, the undersigned (Parties), hereby agree to submit to binding arbitration all matters/issues in the court, and presented by the parties in the pleadings and papers between the undersigned Parties, filed in Kings county Supreme Court under caption/index number 515647/2017 and all related matters.

WE further agree that the controversy be heard and determined by a panel of the following three arbitrators (Arbitrators), Rabbi Zalmen Grausz, Rabbi Isaac Eichenstein and Rabbi Daniel Geltzahler, Pursuant to the terms of the so-ordered stipulation dated September 25th 2019, which is incorporated herein as if fully set forth.

The Parties acknowledge that the Arbitrators may resolve this controversy in accordance with strict application of Orthodox Jewish Law ("Din"), through ordered settlement in accordance with Jewish law ("p'sharakroval'din"), compromise, or any other way they wish to reach a decision.

WE further agree that the Arbitrators may follow any procedure as they decide; that the Arbitrators may determine evidentiary issues; that the Arbitrators shall be empowered to issue subpoenas for witnesses and the production of documents;that the Arbitrators shall have the right to hear testimony and evidence without the presence of a Party if the Party fails to attend a scheduled hearing. The Parties waive the right to cross-examination except under the procedures set by the Arbitrators.

WE further agree that in addition to any final award or decision, the Arbitrators shall be empowered to issue such intermediate or partial decisions or orders as they deem necessary; that no transcript nor recording of the proceeding need be made; that the arbitration may be conducted in whole or in part in a language other than English. Hearings may be held on Sundays and other legal holidays.

It shall be the decision of the Arbitrators as to whether a matter is related to the dispute or not. The award of the Arbitrators shall be in writing and shall be signed by a majority of the Arbitrators and need not be acknowledged or notarized to be confirmed or enforced. The Arbitrators need not explain to the Parties or to anyone else the reason for their decision.In the event that one Arbitrator resigns, is incapacitated or can not continue for any other reason, the remaining two Arbitrators may elect to continue the proceeding and they shall have the same powers and authority.

WE understand that we have the right to be represented by attorneys and/or other advisors in the arbitration at any time, but that any Party may elect to proceed without an attorney, and the Parties shall have the right to argue for themselves before the Arbitrators. The Parties hereby waive formal notice of the time and place of the arbitration proceeding and consent that the arbitration be held and commence with the jurisdiction of the Arbitrators to continue until a final award be made.

It is agreed that all the Court's fees, costs and expenses, including without limitation the costs of any experts required in reaching a decision, shall be divided evenly amongst the Parties; that partial or final adjudication of the controversy may be withheld if there are any outstanding fees, costs or expenses owed to the Court. In the event that a Party does not abide by and perform any award or decision rendered by the Arbitrators or seeks to vacate such decision or award, the Parties authorize the Arbitrators to award additional fees and legal costs.

In the event that after an award is made a dispute between the Parties arises as to the interpretation of the award, compliance of the Parties, or if a Party motions for reargument due to their claim of a judicial error or new evidence etc., the Parties agree that the Arbitrators shall have binding Jurisdiction on the mailers, and the Parties authorize the Arbitrators to add to, amend, change, or clarify a decision, to the extent permitted by law.

WE further agree not to subpoena any member of the Court (Member) as witnesses in a hearing held in a secular or religious court or arbitration of any kind concerning this proceeding; not to bring suit against any Member in a secular or religious court, and waive any claims against all Members arising from their conduct of this arbitration.

WE further agree to fully indemnify and hold harmless the Members individually and jointly for any expenses, fees, loss, damage, outlay including without limitation all attorney fees and court costs which the Members may at any time sustain, incur or be exposed to in relation to any subpoenas or suit instituted or threatened against the Members jointly or individually in connection to this controversy.

WE further agree to faithfully abide by and perform any interim or/and final award or decision rendered by the Arbitrators. The decree of the Arbitrators shall be enforceable in the courts in the State of New Jersey and/or New York.

The Arbitrators shall not be required to take an oath or administer an oath to any witness or Party at the hearing. The terms of this agreement are severable, and the illegality or viability of any terms of this agreement shall not affect remainder of this agreement, which shall remain valid and enforceable. The Parties submit themselves to the personal jurisdiction of the courts of the State of New Jersey and/or New York for any action or proceeding to confirm or enforce a decree of the Arbitrators pursuant to NJSA 2A:24-1 et. seq. and Article 75 of the New York Civil Practice Law and Rules.

All notices and service of the Arbitrators' award shall be sufficient if, a) personally delivered or b) deposited in the U.S. Mail by regular or certified mail or c) deposited with a reputable private courier service, directed to a Party at his or her last known address. All notices shall be effective upon such personal delivery, or two (2) business days after being deposited in the U. S. Mail or with private courier service as noted above.

In the event that a Party is a corporate entity, the undersigned fully warrants that it has full rights and authority to represent said corporate entity and enter into this agreement on its behalf.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of December 2, 2019

Petitioners,

David Y. Shor

Rafael Grausz

Levi Goldberg

Feivel Unger

Motti Katz

Moshe Hershkowitz

Jacob Levitman

Yitzchok Lunger

Chaim Katz

Yitzchok Lunger

Mendel Weisberg

Lazer Fischer

Aron Jungreis

David Berkovitz

Noson Josephy

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of November 6, 2019

Intervenor Respondents,

Chevra Anshe Lubawitz Of Borough Park

By KHAIM VAYSMAN
Khaim Vaysman, Trustee & President

By
Asher Gluck, Trustee & Secretary

By Semen Weiss
Semen Weiss, Trustee & Treasurer

Waterfront Property Management LLC

By
Moses Karpen, Waterfront Property Management

4024 12th Ave LLC

Chevra Anshe Lubawitz Of Borough Park,

By KHAIM VAYSMAN
Khaim Vaysman, Trustee & President

By
Asher Gluck, Trustee & Secretary

By Semen Weiss
Semen Weiss, Trustee & Treasurer

Waterfront Property Management LLC

By
Moses Karpen, Waterfront Property Management

At an IAS Term, Part 29 of the Supreme Court of the state of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 22nd day of November 2017.

P R E S E N T:

Hon. Wayne P. Saitta, Justice.

----------X Index No.:515647/2017

In the Matter of the Application of
DAVID Y. SHOR, RAFAEL GRAUSZ, LEVI GOLDBERG, FEIVEL UNGER, MOTTI KATZ, MOSHE HERSHKOWITZ, JACOB LEVITMAN, CHAIM KATZ, YITZCHOK LUNGER, MENDEL WEISBERG, LAZER FISCHER, ARON JUNGREIS DAVID BERKOVITS, and NOSON JOSEPHY, as members of CHEVRA ANSHEI LUBAWITZ OF BOROUGH PARK,

DECISION and ORDER

Petitioners,

-against-

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Respondent,

CHEVRA ANSHEI LUBAWITZ OF BOROUGH PARK, 4024 12TH AVENUE LLC, and WATERFRONT PROPERTY MANAGEMENT LLC,

Intervenors-Respondents.

----------X

Petitioners, DAVID Y. SHOR, RAFAEL GRAUSZ, LEVI GOLDBERG, FEIVEL UNGER, MOTTI KATZ, MOSHE HERSHKOWITZ, JACOB LEVITMAN, CHAIM KATZ, YITZCHOK LUNGER, MENDEL WEISBERG, LAZER FISCHER, ARON JUNGREIS, DAVID BERKOVITS, and NOSON JOSEPHY, as members of CHEVRA ANSHEI LUBAWITZ OF BOROUGH PARK , (hereinafter "Petitioners"), move this Court for an

Order annulling the decision of the ATTORNEY GENERAL to approve the sale of the property owned by Intervenor-Respondent CHEVRA ANSHEI LUBAWITZ OF BOROUGH PARK, and extending the TRO issued on August 24 2017 pending determination of this proceeding.

Upon reading the Order to Show Cause issued August 24, 2017, together with the Verified Petition of Eli Feit, Esq. and Stuart A. Blander, Esq., Attorneys for Petitioners, dated August 10th, 2017, and all exhibits annexed thereto; the Affirmation in Support of Joseph Schwartz, dated, August 21 2017, the Affirmation in Support of David Linder, dated August 23, 2017, the Affirmation in Support of Feivel Unger, dated July 28, 2017, the Affirmation in Support of Isaak Forkosh dated September 10 2017; the Notice of Motion of Laura A. Sprague, Esq., office of the ATTORNEY GENERAL of the State of New York, dated October 23rd, 2017, together with the Memorandum of Law in Support of Motion to Dismiss by Laura A. Sprague, Esq., dated October 23rd, 2017; the Answer of the Intervenor-Respondents, dated October 23, 2017; the Memorandum of Law in Opposition to Petition, by Scott E. Mollen, Esq., Janice I. Goldberg, Esq. and Stephen M. Medow, Esq., Attorneys for Intervenors Respondents, dated October 23rd, 2017; the Affidavit in Opposition of Khaim Vaysman to the Petition, sworn to October 3rd, 2017 and all exhibits annexed thereto; the Affidavit in Opposition of Asher Gluck, sworn to October 20th, 2017 ,and all exhibits annexed thereto; the Affidavit in Opposition of Moses Karpen, sworn to October 4, 2017, and all exhibits annexed thereto; Petitioners' Memorandum of Law by Eli Feit, Esq. and Stuart A. Blander, Esq., dated October 31st, 2017; the Affirmation in Further Support by David Y. Shor, dated October 30th, 2017, and all exhibits annexed thereto; the Affirmation in Further Support of Jehuda Shmaya, dated October 30, 2017 and all exhibits annexed thereto; the Affirmations in Further Support of Mendel

Weisberg, Aron Graus, David Linder, Chiam Katz, and Jacob Levitman, all dated October 29, 2017; a letter by Laura Sprague Esq., dated November 7, 2017; a letter in response by Scott E. Mollen, Esq., dated November 8, 2017; a letter in response by Stuart A. Blander, Esq., dated November 8, 2017; and the Petition and Motion to Dismiss the Petition having come before the Court on November 16, 2017, and after argument of counsel and due deliberation thereon, the motion to dismiss the petition is granted in part and denied in part and the Petition is converted into a plenary action for the reason set forth below.

FACTS

This proceeding involves a dispute between persons who assert they are members of Intervenor-Respondent CHEVRA ANSHEI LUBAWITZ OF BOROUGH PARK, (hereinafter the "Synagogue"), concerning a sale of the Synagogue's real property located at 4024 12th Avenue, in Borough Park Brooklyn upon which the Synagogue's shul, (hereinafter the "building"), is situated.

The Synagogue is a New York religious corporation that was established in 1914, and the Synagogue has conducted services at the building located on the property for over 90 years.

Petitioners assert that they are members of the Synagogue. Which of the Petitioners are actually a members of the Synagogue is contested.

In 2016 Trustees of the Synagogue sought to enter into an agreement with a developer to build a new building for the Synagogue, due to what they state is the deteriorated condition of the building and the Synagogue's lack of financial capacity to

repair and maintain the building. Petitioners contest that the building is deteriorated and that the Synagogue cannot afford to repair or maintain the building.

A meeting of the members of the Synagogue was held on April 3, 2016 to discuss a sale of the building to a developer, in return for the developer constructing a new building with a new space for the Synagogue on the ground floor and basement, and residential condominiums above.

There is a dispute between the parties about whether or how notice of the meeting was given to the members. The Synagogue says that notice was given orally at the sabbath services that were held on the two weeks preceding the meeting and that a written notice was posted. Petitioners claim that notice was not given at those services, and that no written notice was given.

The parties also disagree as to what was discussed and approved at the meeting. Petitioners claims that only the concept of a sale of the building was discussed and approved. They also assert that the members at the meeting were told that the specifics of any actual proposed sale would be discussed at a future meeting.

The Synagogue contends that at the meeting the members approved the sale of the property to 4024 12th AVENUE LLC (hereinafter the "LLC") for a price of $3,100,000 by a vote of 12 to 1. Petitioner ARON GRAUS, who the Synagogue admits is a member, stated that he opposed the sale of the building at the meeting.

Two days after the meeting, on April 5, 2016, the Synagogue entered into a contract with the LLC to sell the building for $3,100,000. The contract did not contain a provision requiring the LLC to build a new facility on the first floor and basement. Nor did the

contract contain a provision that the new facility would be sold back to the Synagogue. The contract stated that it was subject to approval of the ATTORNEY GENERAL.

The Synagogue then submitted a petition dated June 15, 2016, to the ATTORNEY GENERAL for Approval of the sale, and as part of the Petition the Synagogue submitted a report of the special meeting of April 3, 2016, which stated that the members by a vote of 12 to 1 approved the sale of the building to 4024 12th Avenue LLC for $3,100,000. The petition asserted that no member or third party opposed the sale. The petition stated that the Synagogue intended to use the proceeds of the sale to acquire a new facility, but did not specify that the buyer would transfer the first floor and basement of a new building on the property back to the Synagogue. Included with the petition was an appraisal stating that the value of the property as of March 28, 2016, was $3,100,000.

On June 30, 2016, the ATTORNEY GENERAL approved the transaction based on the petition and exhibits and the fact that no one raised any objection to its approval with the ATTORNEY GENERAL. As a condition of its approval, the ATTORNEY GENERAL required the proceeds of the sale, after closing costs, by deposited in an IOLA account of the Synagogue's attorneys to be released only upon the approval of the ATTORNEY GENERAL.

After the approval, the Synagogue decided to restructure the transaction to avoid the requirement that the proceeds be held in escrow. Also, Joel Haut, who was the developer who was going to build the new building, decided to withdraw from the deal.

The Synagogue located another developer, Moses Karpen, and according to Khaim Vaysman, President of the Synagogue, the Synagogue revised the transaction to be joint development project.

The Synagogue and Karpen entered into an operating agreement under which Karpen would be the Managing member of the 4024 12th Avenue LLC and own an 81% interest in the LLC. The Synagogue would own a 19% interest in the LLC.

The Synagogue would not receive the purchase price at closing, but instead would be credited with a $3,100,000 capital contribution by the LLC. Karpen agreed to build the new building with a new facility on the first floor and basement, and residential condominiums above. Karpen's capital contribution under the agreement would be the monies he expended in constructing the building.

Upon completion of the building, and conversion of the building into condominiums, the first floor and basement unit would be deeded back to the Synagogue. Once the first floor and basement was deeded back, the Synagogue's capital contribution credit of $3,100,000 and their 19% interest in the LLC would be liquidated. Karpen also gave a personal guarantee for the completion of the facility.

Another membership meeting of the Synagogue was held on February 26, 2017. The same issues raised as to the April 3, 2016 meeting concerning notice of the meeting and whether the specific sale to the LLC was discussed and voted upon, are also raised as to the February 26, 2017 meeting. Further, Petitioners allege that the operating agreement of the LLC was never presented at the meeting.

On February 26, 2017, the Synagogue also entered into an agreement with the LLC to purchase the completed facility on the first floor and basement of the building to be built on the property for $3,000,000. The agreement does not include a closing date for the transfer of title to the first floor and basement.

The Synagogue submitted a Supplemental Verified Petition dated April 27, 2017 to the ATTORNEY GENERAL for approval of the new transaction. As part of the Supplemental Petition, the Synagogue submitted a report of the special meeting of February 27, 2017, which stated that the members unanimously approved the sale of the building to the LLC for $3,100,000 and that the members also agreed to purchase the first floor and basement when the building is completed for $3,000,000. The Supplemental Petition asserted that no member or third party opposed the transaction.

On May 3, 2017, the ATTORNEY GENERAL approved the Supplemental Petition, based on the Petition and exhibits and the fact that it received no objection to the sale. As a condition of its approval, the ATTORNEY GENERAL required the Synagogue to make yearly reports on the progress of the construction of the first floor and basement for five years after closing.

On June 14, 2017, the Synagogue executed a deed transferring the property to the LLC. Petitioners assert that they did not learn that the Synagogue had filed a Petition with the ATTORNEY GENERAL, or that the Synagogue had contracted to sell the property, until after the deed was executed.

Petitioners commenced this Article 78 proceeding against the ATTORNEY GENERAL to annul its approval of the Synagogue's Supplemental Petition, by Order to Show Cause dated August 24, 2017. The OSC contained a Temporary Restraining Order (TRO) which enjoined Karpen and the Synagogue from demolishing or altering the building, transferring or encumbering title to the property, or limiting the Synagogue's functions in the current building.

After the Order to Show Cause was signed, the Synagogue, along with 4024 12th AVENUE LLC, and WATERFRONT PROPERTY MANAGEMENT LLC intervened as Respondents, by stipulation dated August 31, 2017, and then filed an answer dated October 23, 2017.

The ATTORNEY GENERAL filed a pre-answer motion to dismiss the Petition which was returnable the same day as the Petition.

ARGUMENTS

Petitioners argue that the ATTORNEY GENERAL's approval should be annulled because 1) the Petitioners did not find out about the sale or application to the ATTORNEY GENERAL until after the sale, 2) the members of the Synagogue were not given notice of the meeting at which the sale was purportedly approved, 3) neither the specific sale of the property to the LLC for $3,100,000, nor the Operating agreement of the LLC was approved by the members, 4) the application to the ATTORNEY GENERAL made material misstatements of fact in stating that the building is deteriorated and unsafe, 5) the sale is not an arms-length transaction and the purchase price is inadequate, and 6) it is in the best interests of the Synagogue to continue to use the current building.

Petitioners argue in the alternative that if the Court determines the they are not entitled to Article 78 relief, that the Court convert the proceeding into a plenary action against the Intervenor-Respondents.

The ATTORNEY GENERAL moves to dismiss the Petition on the grounds that Petitioners have not demonstrated that the ATTORNEY GENERAL's approval was arbitrary and capricious given the information it had at the time the decision was made.

The ATTORNEY GENERAL also argues that given Petitioners' allegations that the Synagogue made fraudulent statements in its petition to the ATTORNEY GENERAL, and the fact that the property has been transferred, that Petitioners' proper remedy is through a plenary action in Court to set aside the transfer on the grounds that it was procured by fraud.

The ATTORNEY GENERAL stated that annulling its approval does not automatically rescind the sale and further that the ATTORNEY GENERAL does not have the power to rescind a sale. The ATTORNEY GENERAL also stated that the Court had the authority to rescind the sale even if the ATTORNEY GENERAL's approval was not first annulled, and that the Court should convert the Article 78 proceeding into a plenary action for rescission and dismiss the action as against the ATTORNEY GENERAL.

Intervenor-Respondents argue that because the sale of the property occurred before Petitioners commenced this proceeding, they are barred by section 302 of the Not-for-Profit Law (N-PCL) from seeking to rescind the sale on the ground that it was ultra vires.

Intervenor-Respondents also argue that many of the Petitioners are not members of the Synagogue and thus do not have standing.

The Intervenor-Respondents further argue that there were no misrepresentations of fact in the Synagogue's petitions to the ATTORNEY GENERAL, that proper notice of the membership meetings was given, that the sale was approved at the April 3, 2016, membership meeting and the revised sale was approved at the February 26, 2017, membership meeting.

The Intervenors-Respondents argue that the sale is in the best interests of the Synagogue because the current building is in need of extensive repair and is dangerous,

and that the Synagogue does not have the financial resources to repair the building. They assert that the facility that is to be built in the new building will be far superior to the current building, that it will be 10,000 square feet, and that it will include a mikvah and facilities in which to hold events, which will produce fees that will provide a steady income for the Synagogue, that will allow it to continue and grow into the future.

DISCUSSION

As a preliminary matter, the Court does not need to resolve the question of which Petitioners are members of the Synagogue at this point. Intervenor-Respondents have admitted that three Petitioners, ARON GRAUS, JACOB LEVITAN, and LEVI GOLDBERG are members of the Synagogue. Also, a list of members submitted as an exhibit to the Affidavit of Khiam Vaysman indicates that Petitioner MOSHE HERSHKOWITZ is member of the Synagogue.

The question of who is a member of the Synagogue is not straight forward. Intervenor-Respondents state that pursuant to the by-laws, one becomes a member by applying to the Synagogue's Trustees. Petitioners argue that by-laws that Intervenor-Respondents cite have never been adopted and therefore the criteria for membership in Section 195 of the Religious Corporation Law (RCL) apply. Section 195 defines members as:

> "All persons who are then members in good and regular standing of such church by admission into full communion or membership therewith in accordance with the rules and regulations thereof, and of the governing ecclesiastical body, if any, of the denomination or order to which the church belongs, or who have been stated attendants on divine worship in such church and have regularly contributed to the financial support thereof during the year next preceding such meeting; and any other church incorporated under this article, . . . " RCL 195

Given the fact that all the Petitioners are seeking the same relief of rescinding the transfer of the Synagogue's property, and at least 3 or 4 Petitioners are members and have standing to challenge the sale, determination of which, if any, other Petitioners are members can be postponed until there is a more complete record.

Not-for Profit Law Section 302

Petitioners' allegations that the members did not approve of the sale of the property to the LLC, that the members were not given notice of the meeting at which the sale was discussed, that the sale of the building was not in the best interests of the Synagogue, and that the approval was procured by material misrepresentations are all claims that go to the Synagogue's authority to transfer title of the property to the LLC.

Section 302 of the N-PCL provides that no transfer of property by a not for profit or religious corporation that has been approved by the ATTORNEY GENERAL shall be invalid by reason of the lack of capacity or authority of the corporation to make the transfer. N-CPL 203(a). However, section 203(a), states "but such lack of capacity or power may be asserted":

> (1)In an action by a member against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of such contract; provided that anticipated profits to be derived from the

> performance of the contract shall not be awarded by the court as a loss or damage sustained. N-CPL 203(a)(1)

Intervenor-Respondents argue that subsection (1) applies only to a transfer that "is being or is to be performed" and thus cannot be a basis to attack a transfer that has already been performed. They argue that to allow a post transfer attack on a sale once it had received ATTORNEY GENERAL approval would render title derived from religious corporations uncertain, and make it very difficult and costly for religious corporations to sell property, even when it was in their best interests to do so.

Petitioners counter that they brought this proceeding within the four month statute of limitations for challenging the ATTORNEY GENERAL's approval and that as the purchaser knew that the sale required such approval, they were on notice that it could be challenged for four months following the approval. Petitioners also argue that where an approval is obtained by misrepresentations that the members were given notice of the sale, but in fact they were not given notice and did not learn of the sale until after it occurred, the fact that the transfer has occurred should not bar an action to set it aside.

The leading case on this issue is *Congregation Yetev Lev D'Satmar, Inc. v 26 Adnar N.B. Corp.*, 219 AD2d 186, 641 N.Y.S.2d 680 (2nd Dept 1996) *lv denied* 88 NY2d 808 (1996).

In that case, members of a congregation sought to set aside a transfer of real property of the congregation. The sale had occurred in 1978, 12 years before the commencement of the action in 1990, and after the property had been resold several times to bona fide purchasers for value.

As in the case herein, members of that synagogue argued that the approval of the sale was procured by fraudulent statements. They alleged that the sale was not approved by the members, that the members were not notified of the meeting where the sale was approved, that the sale price was not for fair market value, and that the sale was not in the best interests of the congregation. These are the same allegations raised by Petitioners here.

The Appellate Division found that the evidence established "beyond peradventure" that sale was the product of a binding resolution of the board of the congregation and properly obtained court orders, and it dismissed the complaint to set aside the transfer.

The Appellate Division held that pursuant to N-PCL section 203, a religious corporation cannot invalidate an otherwise lawful consummated transfer of property as ultra vires, and that its remedy is against its officers.

The Appellate Division held that, the defense of ultra vires cannot be wielded as a sword by a plaintiff to invalidate a contract that has already been fully performed by both parties, citing *Quintal v Fidelity & Deposit Co.,* 142 Misc 657, 255 NYS 259 (Su Ct NY 1932) *affd* 238 App Div 820.

The Appellate Division also held that by waiting 12 years to challenge the sale, the Plaintiffs either ratified the sale or were estopped from denying its validity. *Congregation Yetev Lev D'Satmar, supra* at 191, 683-4.

The decision in *Congregation Yetev Lev D'Satmar,* was relied on in a similar situation, in the case of *Congregation Beth Hamedrash Hagodel of Mapleton Park Jewish Center Inc., v Perr* 16 Misc3d 1103(A) (Sup Ct Kings, 2007).

That case, commenced in 2005, sought to set aside a 1994 sale of real property by Congregation Beth Hamedrash, after the property had been resold several times. The Plaintiffs in that case were members of the congregation and made similar complaints as did the Plaintiffs in *Congregation Yetev Lev D'Satmar,* and as the Petitioners do here. The Court dismissed the complaint citing the decision in *Congregation Yetev Lev D'Satmar,* and N-PCL 203(a), although it did not address N-PCL-203(a)(1).

The situation in this case is distinguishable from those in *Congregation Yetev Lev D'Satmar and Congregation Beth Hamedrash.* The first difference is that the actions in those cases were commenced more than ten years after consummation of the sales they challenged. The second difference is that in those cases, the properties had been resold to several purchasers for value.

Petitioners here commenced this suit within four months of the ATTORNEY GENERAL's approval, which is within the statute of limitations for a challenge of the approval. More significantly, the property has not been resold to any other purchasers.

Karpen was involved in preparation of the transaction. He negotiated an extensive operating agreement that was the basis for the sale, and Karpen was, without doubt, aware that the sale was contingent upon the ATTORNEY GENERAL's approval.

The concerns about the impact on the stability of title to real property that had once been owned by a religious corporations, that were present in the *Congregation Yetev Lev D'Satmar and Congregation Beth Hamedrash* cases are not as significant in this case, given that the challenge to the sale is made with four months of its approval and the property has not been resold.

Another significant difference in this case is that the transfer has not been fully performed. The Appellate Division in *Congregation Yetev Lev D'Satmar* held that an ultra vires defense was not available when a contract had been fully performed by both parties, *supra at* 190, 683. citing *Quintal v Fidelity & Deposit Co.,* 142 Misc 657, 255 NYS 259 (Su Ct NY 1932), *affd* 238 App Div 820.

The Court in *Quintal,* held that, "[t]he rule that a corporation is estopped from asserting the defense of *ultra vires* in an action upon a contract performed by the other party thereto appears to be confined, at least in this State, to cases where the corporation received and retained the benefits of the other party's performance." *Id at* 660, 262.

The transaction at issue here involved more than merely the transfer of the property to the LLC. The original contract of sale of April 2016, on its face, was a straight forward contract to sell the property to the LLC. Although not part of the contract, part of the agreement was that once the building was completed, the Synagogue would receive title to a renovated facility on the first floor and basement. As part of its 2016 approval the ATTORNEY GENERAL required the purchase price be held in escrow.

In order to avoid the requirement of having the purchase monies put in escrow, the parties modified the original contract of sale with an operating agreement. As described above, the operating agreement provided that instead of receiving the $3,100,000 purchase price at closing on the property, the Synagogue would be given a capital contribution credit and 19% in interest in the LLC.

Karpen would be the managing member of the LLC and would have an interest of 81%. Karpen would not be required to a make an initial capital contribution for his interest, but he would contribute the costs of developing the building as his contribution.

Once the building was completed, the Synagogue was to be given title to a condominium encompassing the first floor and basement. Only once it receives title for the first floor and basement would its interest in the LLC, and by extension its interest in the property be extinguished. At this point in time the Synagogue still has a 19% interest in the fee of entire property.

As of this date, the only performance has been by the Synagogue in executing the deed transferring the property to the LLC.

While the LLC has received its benefit of the bargain, the Synagogue, at this point, has not. It has not received the purchase price of $3,100,000, it has not received the new facility that was its consideration for selling the property, and it has not received title to the first floor or basement. All that the Synagogue has received is a 19% interest, a credit of $3,100,000 in the LLC's capital account, and a personal guarantee by Karpen that he will complete his part of the agreement.

There are few safeguards in the agreement to enable the Synagogue to ensure that it gets its end of the bargain. There are no funds or escrowed monies to ensure that the Synagogue will be able to recover any part of the $3,100,000 credit. There is no bond guaranteeing Karpen's performance, only his personal guarantee. The Synagogue's 19% interest is of limited utility in securing performance, given that decisions may be made by members controlling 75% of the interests in the LLC, and Karpen has 81% interest.

While the LLC and the Synagogue entered into a contract to sell the first floor and basement back to the Synagogue for $3,000,000, that contract has not been recorded.

The Petitioners submitted an affirmation of Jehuda Shmaya, to which is annexed a purported transcript of the April 3, 2016 membership meeting, in which some participants raised a question of whether there is restriction in the deed of the property that forbids using the property for anything other than a shul. The deed for the property dated July 17, 1922, from Congregation Beth El of Boro Park to the Synagogue, recites that the deed is subject to covenants and restrictions contained in former deeds. During argument, none of the parties was in a position to represent to the Court whether or not there was a restriction in the Synagogue's deed that would prevent building condominiums on the property.

It appears that in the event that Karpen does not perform his end of the agreement to build a new facility for the Synagogue, the Synagogue will not get its property back but will merely have a claim for monetary damages it may pursue against Karpen and the LLC, along with whatever other creditors there may be at that time.

More importantly, the Synagogue decided to sell its property and shul building not to receive $3,100,000, but to receive a fully renovated facility that it believed it needed to stem the tide of a dwindling membership and survive as a congregation. Until new Synagogue facility is completed and deeded to the Synagogue, the agreement will not be fully performed.

As the agreement has not been fully performed, an action to rescind the transfer that was part of the agreement is not barred by N-PCL 203.

Motion to Dismiss Article 78

That part of the petition that seeks to annul the decision of the ATTORNEY GENERAL should be dismissed as moot. Contrary to Petitioners arguments, a nullification of the ATTORNEY GENERAL's approval would not automatically result in the voiding of the deed to the LLC.

The approval of the sale by the ATTORNEY GENERAL was required pursuant to section 510 of the Not-for-Profit Corporation Law (N-PCL) because the property is the main asset of a religious corporation. However, the fact that if the approval had been nullified before transfer of title, then the sale could not have been closed, does not mean that annulling the approval would automatically void a transfer of title that has taken place. A separate action by a party with standing would have to be commenced in a Court of competent jurisdiction in order to rescind the transfer.

As discussed above, the Petitioners who are members of the Synagogue have standing to commence an action seeking to set aside that transfer of title, as ultra vires, on the grounds that the members did not approve the transfer, that they were not given notice of the meeting in which the sale was approved, and that the approval of the ATTORNEY GENERAL was obtained through material misrepresentations. N-PCL 510, 511-a.

If Petitioners in such a rescission action were to demonstrate either that the members of the Synagogue were not given notice of the meeting, or they did not vote to approve the sale, then the Court in its discretion could rescind the sale despite the ATTORNEY GENERAL's approval.

The ATTORNEY GENERAL concedes that a transfer can be rescinded without first annulling their approval and that they are not a necessary party to an action to rescind the subsequent transfer. Further, the ATTORNEY GENERAL takes no position on whether the transfer should be rescinded.

Since a rescission is not dependent upon first annulling the ATTORNEY GENERAL's approval, and the ATTORNEY GENERAL takes no position on whether the transfer should be rescinded, the question of whether the ATTORNEY GENERAL's approval of the sale was arbitrary and capricious has been rendered moot by the transfer. The Court will grant the motion to dismiss the proceeding as against the ATTORNEY GENERAL.

The Petition contains sufficient factual allegations to make out a cause of action for rescission of the transfer. There would be a basis to rescind the transfer if in fact the members did not approve the sale, or were not given notice of the membership meeting in which the sale was approved, or the sale terms do not provide adequate security for the Synagogue's interests.

This proceeding was initially commenced solely against the ATTORNEY GENERAL but subsequently the Synagogue, and the LLC, who are the parties to the transfer, as well as WATERFRONT PROPERTY MANAGEMETN LLC, a developer, intervened as Respondents. The Petitioners do not seek any relief against the trustees of the Synagogue so they are not necessary parties to a rescission action.

As the Petition sets forth sufficient factual allegations for a cause of action for rescission and all the parties who were parties to the transfer in question are before the Court, the Court, pursuant to CPLR 103(c), shall convert the proceeding as against the

Intervenor-Respondents into a plenary action for rescission of the transfer of the property to the LLC. *Wander v St. Johns University,* 99 AD3d 891, 953 NYS2d 68 (2nd Dept 2012); *Stoffer v Department of Public Safety Town of Huntington*, 77 AD3d 305, 907 NYS2d 38 (2d Dept 2010); *Perrin v Bayville Vil. Bd.*, 70 AD3d 835, 894 NYS2d 131 (2d Dept 2010).

While the Petition sets forth allegations that can support a cause of action for rescission, it is important to note that not all of the questions presented by Petitioners' allegations are justiciable.

In another case involving the Congregation Yetev Lev D'Satmar, the Court of Appeals set forth an ecclesiastical abstention doctrine outlining the limitations of the Courts in resolving religious disputes.

The Court of Appeals in *Matter of the Congregation Yetev Lev D'Satmar v Kahana,* 9 N.Y.3d 282, 849 N.Y.S.2d 463 (2007) held that "[t]he First Amendment forbids civil courts from interfering in or determining religious disputes, because there is substantial danger that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs" at 286, 465.

The Courts have the authority to resolve disputes between religious parties when they can do so by applying neutral principals of secular law.

In doing so, Courts may rely upon internal documents, such as a congregation's bylaws, but only if those documents do not require interpretation of ecclesiastical doctrine. Thus, judicial involvement is permitted when the case can be "decided solely

upon the application of neutral principles of ... law, without reference to any religious principle." *Id.* at 286, 486.

To begin with, the question of who is a member may turn upon questions of observance, with which the Court should not become involved.

There have been questions raised as to the accuracy of the membership list and the by-laws submitted by Intervenor-Respondents.

Intervenors-Respondents claim that most of the Petitioners are not members but are merely *mispallelim*, people who pray at the Synagogue but for whom the Synagogue is not their primary congregation. Intervenor-Respondents also assert that a member must respect the holiness of the Synagogue and have a close relationship with the existing members.

To the extent that it is possible to determine who is a member by resort to the by-laws and minutes, and applying neutral legal principles, the Court can make those determinations. However, questions concerning whether the Synagogue is someone's principle congregation, or whether they respect the holiness of the Synagogue, are questions of doctrinal interpretation in which the Court cannot become involved.

Similarly, the question as to whether the transfer was in the best interest of the Synagogue may involve questions about the Synagogue's religious mission. To the extent the Court is asked to determine whether the agreement provides sufficient protections to ensure that the Synagogue will receive the benefits it has bargained for, that is within the Court's purview.

The adequacy of the compensation is a different matter. Where a non-profit organization decides to sell or develop a property to carry out its mission, the propriety of the organization's decision is not determined solely on whether such a sale or development is at full market value, but whether it is suitable to the needs of the organization in pursuing its mission. A religious corporation has no duty to pursue maximum profit or the highest return to the exclusion of its religious mission.

The decision, assuming it was made on proper notice and with the consent of the members, to demolish the existing shul building in return for a new facility that it believes will allow the congregation to grow, is an internal religious matter with which the Court cannot interfere.

Similarly, a decision by the Synagogue to accept a lower purchase price for the property in return for having a developer build a facility to its specifications that includes a mikvah and other facilities that it believes will meet its needs, even if the market value of the new facility and the purchase price are not equal, is an exercise of discretion that the Court should not disturb.

This is not to say that if there is evidence of collusion between a Synagogue's leadership and a seller, or if a Synagogue cannot articulate a rational basis why its religious mission is furthered by a transfer at less than market value, the Court cannot intervene. However, if the question of whether the best interests of the Synagogue are served by the transfer turn how on its religious mission is best furthered, then the Court should not intervene.

PRELIMINARY INJUNCTION

Given that the Court is converting the Article 78 proceeding into a plenary action, the Court will consider that part of Petitioners application pursuant to CPLR 7805 seeking to extend the (TRO) issued by Judge Steinhardt, as a motion for a preliminary injunction. The injunctive relief sought by Petitioners is not merely a stay of proceedings envisioned in CPLR 7805, but a prohibition on Intervenor-Respondents demolishing or altering the building.

A TRO is an appropriate provisional remedy pending determination of a special proceeding, such as an Article 78, which is usually decided on papers, and in a relatively short time frame. However, a preliminary injunction, with its mandated undertaking, is the appropriate vehicle to enjoin action pending final determination in a plenary action. *Honeywell v Technical Services Inc.,* 103 AD2d 433, 480 NYS2d 627 (3rd Dept 1984).

There is no prejudice in treating the request to extend the TRO as an application for preliminary injunction in this case as both sides have addressed the issue of a preliminary injunction and an appropriate undertaking in their papers and at oral argument.

A party seeking a preliminary injunction must show irreparable harm, inadequate remedy at law, a likelihood of success on the merits of its underlying claim, and that the balance of equities favors granting the injunction.

The underlying claim to rescind the transfer of property from the Synagogue to the LLC was commenced with the stated aim of blocking the demolition of the building.

Destruction of a temple is a classic example of an irreparable harm in the most literal sense. Once it is demolished it is gone forever and its loss cannot be adequately compensated by monetary damages. This is particularly so, given that the building is over 100 years old and has been used by the Synagogue as its place of worship for over 90 years.

To demonstrate a likelihood of success on the merits, a prima facie showing of a right to relief is sufficient; actual proof of the case should be left to further court proceedings *McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Co., Inc,* 114 A.D.2d 165, 498 N.Y.S.2d 146 (2nd Dept 1986); *Gambar Enterprises v. Kelly Servs.,* 69 A.D.2d 297, 306, 418 N.Y.S.2d 818). A preliminary injunction, even when issued after an evidentiary hearing, depends upon probabilities, any or all of which may be disproven when the action is tried on the merits. *J.A. Preston Corp. v. Fabrication Enterprises, Inc.*, 68 N.Y.2d 397, 509 N.Y.S.2d 520 (1986).

A party seeking a preliminary injunction is not required to make a showing sufficient for summary judgment. The fact that the opposing party may raise issues of fact does not require the denial of summary judgment. CPLR 6312(c).

Where denial of injunctive relief would render the final judgment ineffectual, as in the present case, the degree of proof required to establish the element of likelihood of success on the merits should be reduced accordingly *Ma v. Lien*, 1993, 198 A.D.2d 186, 187, 604 N.Y.S.2d 84, 85 (1st Dep't); *Republic of Lebanon v. Sotheby's,* 167 A.D.2d 142, 561 N.Y.S.2d 566. (1st Dept 1990).

Petitioners have demonstrated a likelihood of success. Petitioners submitted an affirmation by ARON GRAUS, who Intervenor-Respondents concede is a member of the

Synagogue, in which he states that he attended sabbath services in the two weeks preceding the February 26, 2017, meeting and no notice of the meeting was given at the services. He also states that he attended the February 26th meeting and the specifics of the sale were not discussed.

Petitioners submit an affirmation by Jehuda Shmaya, in which he states that he attended sabbath services in the two weeks preceding the February 26, 2017 meeting, and that no notice of the meeting was given at the services. He also states that he attended the February 26th meeting and that the specifics of the sale were not discussed and that no vote was taken. Shmaya further states that the 2015 by-laws submitted by the Intervenor-Repsondents were never adopted by the membership.

Shmaya also states in his affirmation that he attended the April 3, 2016 meeting and the specifics of the sale were not discussed or voted on, and that only the concept of selling the property to a developer who would build apartments and a new shul building was discussed. He includes a purported transcript of a recording of the meeting which appears to confirm his account of the meeting, but the transcript is partially in Yiddish and is not authenticated.

Petitioners also submitted affidavits of JACOB LEVITAN, DAVID LINDER, and CHIAM KATZ in which they state that they attended sabbath services in the two weeks preceding the February 26, 2017 meeting, and that no notice of the meeting was given at the services.

In opposition, Intervenor-Respondents put in affidavits from Khiam Vaysman and Asher Gluck. In their affidavits, each of them state that Vaysman gave notice of the April

3, 2016 meeting at the sabbath services for the two weeks preceding the meeting. They each state that there were also notices of the meeting posted in the building.

They each state that the need to sell the building to a developer who would demolish it and build a new building in which the Synagogue would get back the first floor and basement with renovated facilities was discussed at the meeting.

They also stated that Vaysman gave notice of the February 26, 2017 meeting at the sabbath services for the two weeks preceding the meeting, and that at the meeting, the new deal structure was discussed and approved.

Intervenor-Respondents submitted similar affidavits by Lazar Eisdorfer, Jacob Gluck, Michael Maimon, Yisroel Messinger, Menachem Rosenberg, Shlomo Rosenberg, Semen Weiss, attesting to the notice provided for, and the discussion that occurred at, the two meetings.

Significantly, Intervenor-Respondents do not submit contemporaneous minutes of either meeting. They submitted a resolution from the April 3, 2016 meeting approving the sale that was signed by Vaysman and Gluck on June 15, 2016, the same date Vaysman verified the Petition to the ATTORNEY GENERAL to approve the sale. Similarly, they submitted a resolution from the February 26, 2017 meeting approving the sale that was signed by Vaysman and Gluck on April 27, 2017, the same date Vaysman signed the Amended Petition to the ATTORNEY GENERAL to approve the sale. The most probable inference that can be drawn is that the two resolutions are not minutes regularly made and kept by the Synagogue, but were drafted as part of the application to the ATTORNEY GENERAL.

The Petitioners have demonstrated a likelihood of success on the merits of their claims sufficient to justify the granting of the preliminary injunction.

The last prong, a balancing of the equities, weighs in favor of the Petitioners. The harm to Petitioners if the injunction is not granting is great while the burden imposed on Intervenor-Respondents is not.

It is significant in this regard that the proposed development is in its initial stages. The LLC has not commenced construction or gotten permits for demolition of the existing building. Also, neither the LLC nor Karpen, paid any money for the purchase of the property or took out any loans to purchase the property. The LLC does not plan to occupy the property but is going to construct a building that it will sell off as condominiums. Thus, a delay in commencing construction will not cause an undue burden on the LLC.

Also, the injunction in this case will serve to preserve the status quo rather than upset it.

By reason of the foregoing, the Court will issue a preliminary injunction enjoining the Respondent-Intervenors, Moses Karpen or anyone acting their behalf from demolishing or altering the building, or taking any steps to transfer or encumber the property, pending final disposition of this action.

However, the Court will not enjoin the Synagogue from limiting or reducing its functions at the building. The Court understands the Petitioners' concerns that allowing the Synagogue to move its services to another location might "create facts on the ground." However, it would be an improper interference in the internal religious affairs of the

Synagogue for the Court to dictate to the Synagogue where it may hold its religious services and other functions.

UNDERTAKING

The purpose of an undertaking is to protect the Intervenor-Respondents for any damages that they suffer because of the preliminary injunction, in the event that Petitioners were not entitled to the preliminary injunction. CPLR 6312.

The undertaking is not designed to compensate Intervenor-Respondents for damages or losses they may suffer if the Petitioners prevail and the transfer is rescinded. In that case, N-CPL section 203(a)(1) provides that the Court can condition a rescission on granting parties such compensation as may be equitable for the loss sustained by them as a result of the rescission.

For example, Karpen asserts that he has incurred approximately $367,000 in costs for a survey, architects, engineers, zoning experts, an expediter, a designer, environmental reports, inspections, and permit and filing fees, $257,000 of which has been paid.

However, if it turns out that that Court does not rescind the sale this $367,000 would not be lost or wasted. In that case the LLC would still own the building. The LLC would still be able to use the reports and services of the above professionals that he has already paid for in completing the new building. Thus, these expenditures would not be a loss caused by an improper issuance of the injunction.

Similarly, Karpen claims that a lease he signed for alternate space for the Synagogue obligates him to pay $36,000 in rent. However, the lease appended was a

made by the Synagogue, not by Karpen or the LLC, and none of the transactional documents submitted obligate Karpen to pay for the alternate space. The money expended on the lease will only have been wasted in the event rescission is granted.

It is only in the event that Petitioners prevail and the deed is rescinded, that Karpen will lose the value of these expenditures. In that case Karpen may be entitled to be compensated for these expenses pursuant to N-PCL 203(a)(1).

The only result of the injunction in the event that rescission is not granted, is that the development of the new building will have been delayed for the duration of the action.

It is important to note in this regard that neither Karpen nor the LLC has actually paid the purchase price for the property. They have not tied up $3,100,000 so they are not suffering any opportunity cost by the delay. Also, they have not incurred loans to purchase the property that would be accruing interest during the delay.

Further, neither Karpen nor the LLC are prevented from making use of the building during the pendency of the action even though they have no plans to utilize the building. Their intention is to demolish the building and build a new building which they will sell off as condominiums. Karpen's interest in the property is the profit he will realize when the condominium units are sold, which he estimates to be $2,040,000.

It is theoretically possible that there may changes in the market and the value of the condominiums may decline between the time they would have been sold, absent the injunction, and the time the condominiums would be sold, in the event the injunction is granted but rescission is denied. However, such a possible decline in condominium prices in Borough Park is entirely speculative. It is equally possible, if not more so, that

condominium prices will continue to rise. Such a speculative loss is a not a proper basis upon which to set the amount of the undertaking.

Nor, as discussed above, does the injunction require the Synagogue to continue to hold services or otherwise utilize the building during the pendency of the action. Thus, any costs associated with repairing or continuing to operate the building will not be the result of the injunction.

The tangible losses the Intervenor-Respondent would face in the event that the preliminary injunction should not have been granted are the insurance premiums and costs of securing the building for the duration of the injunction.

By reason of the foregoing, the Court sets the undertaking in the amount of $10,000.

WHEREFORE, the Court grants the ATTORNEY GENERAL's motion to dismiss the Petition to the extent of dismissing the Petition as against the ATTORNEY GENERAL, and converting the proceeding into a plenary action for rescission of the transfer of the building against the Intervenor-Respondents pursuant to CPLR 103(c); and converts Petitioners' application to extend the TRO into a motion for a preliminary injunction, and grants the motion for a preliminary injunction on condition that Petitioner deliver an undertaking or post a bond in the sum of $10,000, and it is hereby

ORDERED, that the proceeding is dismissed as to Respondent ATTORNEY GENERAL OF THE STATE OF NEW YORK, and it is further

ORDERED, that the proceeding is converted into a plenary action for rescission of the transfer of the property located at 4024 12th Avenue, Brooklyn New York, against

12TH AVENUE LLC, and WATERFRONT PROPERTY MANAGEMENT LLC, and it is further

ORDERED, that pending final disposition of this action, Intervenor-Respondents CHEVRA ANSHEI LUBAWITZ OF BOROUGH PARK, 4024 12TH AVENUE LLC, WATERFRONT PROPERTY MANAGEMENT LLC, Moses Karpen, and any employees, agents or persons acting at their direction, are enjoined from demolishing, altering, transferring, or encumbering the property and building located at 4024 12th Avenue Brooklyn New York, on condition Petitioners post an undertaking or bond in the amount of $10,000 by December 22, 2017, and it is further

ORDERED, that Intervenor-Respondents CHEVRA ANSHEI LUBAWITZ OF BOROUGH PARK, 4024 12TH AVENUE LLC, WATERFRONT PROPERTY MANAGEMENT LLC, Moses Karpen, and any employees, agents or persons acting at their direction, are not enjoined from applying for permits to demolish or alter the building, or filing documentation and other paperwork in connection with such applications, and it is further

ORDERED, that the portion of the Temporary Restraining Order of August 24, 2017 that enjoins Karpen, the Synagogue and all those acting on their behalf from demolishing, altering, transferring, or encumbering the property and building located at 4024 12th Avenue Brooklyn New York, is extended until December 22, 2017.

This constitutes the Decision and Order the Court.

ENTER:

KINGS COUNTY CLERK
FILED
2017 NOV 29 AM 11:46

FILED
NOV 29 2017
KINGS COUNTY CLERK'S OFFICE

JSC

HON. WAYNE P. SAITTA
J.S.C.

31

Enter forthwith

HON. WAYNE SAITTA
J.S.C.

At an I.A.S. Trial Term, Part 25 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 25 day of Sept 2019

PRESENT:
Hon. Wayne P. Saitta
Justice

In The Matter of The Application of David Shor et al.
Plaintiff(s)

- against -

The Attorney General of The State of New York et al
Defendant(s)

Cal. No. 515647/2017
Index No.

SO-ORDERED STIPULATION

The following papers numbered 1 to read on this motion — Papers Numbered

Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed
Answering Affidavit (Affirmation)
Reply Affidavit (Affirmation)
Affidavit (Affirmation)
Pleadings - Exhibits
Stipulations - Minutes
Filed Papers

KINGS COUNTY CLERK FILED 2019 OCT -1 AM 8:38

The Petitioners and the Intervenor-Respondents hereby stipulate as follows:

(1) All matters/issues [redacted] [redacted] to this Court & presented by the parties in the pleadings & papers filed in this proceeding shall be presented for determination to a Rabbinical Panel consisting of Rabbis Zalman Grausz, Isaac Eichenstein and Daniel Geltzehler (neutral) - (the "Beth Din"), including but not limited to all claims, if any, for damages & determination of disposition of the $25,000 undertaking posted by Petitioners.

For Clerks use only
MG
MD
Motion Seq. # 56-7

ENTER

HON. WAYNE SAITTA J.S.C.

CIV-rev 11-04

STUART A BLANDER
Atty For Petitioners

John Lenuzzi
Atty For Congregation

Jeffrey R. Miller
Atty For Waterfront Property Mgt LLC

Alyssa Herschberg
Atty For 4024 12th Avenue, LLC

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INDEX# 515647/17 -- DATE 9/25/2019

PLAINTIFF SHOR vs DEFENDANT AG

(2) The parties shall execute and submit to the Beth Din a standard form submission agreement within 45 days of today's date to be consistent w/ scope of Paragraph #1, herein.
(3) The preliminary injunction issued by this Court (11/29/17) shall remain in effect for a period of 30 days following the issuance of a written determination/award by the Beth Din
(4) In the event a party or parties fail to execute and deliver a submission agreement to the Beth Din w/in said 45 days of this stipulation, relief may be sought from this Court, which shall retain jurisdiction for the purpose of enforcing the terms of this stipulation, subject to (6)
(5) Upon the execution and delivery of a submission agreement to the Beth Din, this proceeding shall be stayed pending the Rabbinical Arbitration proceeding. (The 11/29/17 injunction shall remain in effect as per item # 3 Above).
(6) Counsel for all respective parties have been authorized by their clients to enter into this stipulation, except that this stipulation shall be subject to the

ENTERED/SO ORDERED

JSC / JHO

PAGE 2

HON. WAYNE SAITTA
J.S.C.

INDEX# 515647/17 -- DATE 9/25/2019

PLAINTIFF Shor vs DEFENDANT AG

Intervenor-Respondent Chevra Anshei Lubawitz by reporting back to the Court on or before 10/21/2019 10/24/19 that said party authorizes this stipulation agreement. Should said authorization not be obtained, this stipulation will be vacated and the proceeding before this court shall continue. or should any party for any reason elect to opt out by written notice

⑦ The costs + fees of the neutral Rabbinical Arbitrator, Rabbi Daniel Geltzehler shall be paid 50% by Petitioners and 50% by Intervenor Respondents.

⑧ In the event a party or parties shall fail to execute + deliver a Standard Submission Agreement in violation of its obligations hereunder, the aggrieved party(ies) shall have the option of electing to proceed with this litigation against such party(ies) in breach.

⑨ Counsel for the Petitioners represents that the World Chabad Lubavitch shall be bound by the Beth Din proceedings + determination. Petitioners Counsel hereby represents that he has authority to ~~bind~~ so bind the Chabad Lubavitch

(Chabad Central)

ENTERED/SO ORDERED

JSC / ~~J HO~~

KINGS COUNTY CLERK FILED 2019 OCT -1 8:38

HON. WAYNE SAITTA
J.S.C.