

**People's First Baptist Church, Inc. v U.S. Capital Holdings Corp.**

2015 NY Slip Op 31421(U)

July 8, 2015

Supreme Court, Kings County

Docket Number: 501053/13

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No.:501053/13  
Motion Date: 1-5-15  
Motion Cal. No.:49

-----x  
PEOPLE'S FIRST BAPTIST CHURCH, INC.,

Plaintiff,

-against-

**DECISION/ORDER**

U.S. CAPITAL HOLDINGS CORP.,

Defendant,  
-----x

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The following papers numbered 1 to 2 were read on  
this motion

<b>Papers:</b>	<b>Numbered:</b>
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits.....	1
Answering Affirmations/Affidavits/Exhibits.....	2
Reply Affirmations/Affidavits/Exhibits.....	
Other.....	

Upon the foregoing papers the within motion is decided as follows:

Defendant moves for an order pursuant to Religious Corporations Law § 12 [9] for judicial approval of the mortgage *nunc pro tunc*.

Plaintiff, PEOPLE'S FIRST BAPTIST CHURCH, INC., a religious corporation, commenced this action for among other things, a declaration that a mortgage it had given to defendant, U.S. CAPITAL HOLDINGS CORP., is void. Plaintiff had previously moved for a default judgment due to defendant's failure to timely appear in the action. Defendant opposed the motion and cross-moved for an order compelling plaintiff to accept its answer.

In a decision and order dated February 18, 2014, this Court held that while plaintiff

sufficiently demonstrated its entitlement to a default judgment granting it the relief it had requested, defendant had demonstrated a reasonable excuse for failing to timely appear in the action and a potentially meritorious defense. The Court stated as follows:

Plaintiff correctly points out that Religious Corporations Law § 12(1) prohibits a religious corporation, such as the plaintiff, for mortgaging “any of its real property without applying for and obtaining leave of the court therefor pursuant to section five hundred eleven of the not-for-profit corporation law . . . .”. The object of the statute is to protect the religious purposes of the corporation and to prevent a dissipation and perversion of the corporate assets (*Bernstein v. Friedlander* 58 Misc.2d 492, 495, 296 N.Y.S.2d 409, 413, *citing Muck v. Hitchcock*, 212 N.Y. 283, 287, 106 N.E. 75, 77). Some courts have held that where a religious corporation had mortgaged real property without obtaining leave of court in accordance with Religious Corporations Law § 12(1), the mortgage is void (*see* 50 N.Y.Jur., Religious Societies, s 121; *Matter of Beth Israel of Brownsville*, 114 Misc. 582, 187 N.Y.S. 36; *Bernstein*, 58 Misc.2d at 495, 296 N.Y.S.2d at 413).

In this case, plaintiff demonstrated in its moving papers that plaintiff gave the subject mortgage to the defendant without obtaining leave of Court pursuant to Religious Corporations Law § 12(1). Defendant did not submit any admissible evidence refuting this. For these reasons, plaintiff claims that regardless of defendant’s excuse for failing to timely appear in the action, defendant does not have a valid defense.

In the court’s view, when a religious corporation mortgages any of its real property without complying with Religious Corporations Law § 12(1), the mortgage is rendered only voidable. In this regard, Religious Corporations Law provides an exception to the statutory requirement of obtaining leave of the court by permitting the court to confirm a conveyance after the sale has been made and the conveyance executed and delivered ( *see* Religious Corporations Law § 12 [9]; *Church of God of Prospect Plaza v. Fourth Church of Christ, Scientist of Brooklyn*, 54 N.Y.2d 742, 442 N.Y.S.2d 986, 426 N.E.2d 480; *Matter of Yancey [New Chapel Baptist Church]*, 307 N.Y. 858, 122 N.E.2d 746).

Defendant's moving papers sufficiently established a triable issue that but for plaintiff's failure to comply with Religious Corporations Law § 12(1), the mortgage would be valid and that an application pursuant to Religious Corporations Law § 12[9] would be granted. In the Court's view, under the circumstance of this case, this constitutes a meritorious defense. Defendant should therefore be given an opportunity to seek retroactive judicial approval of the mortgage ( *see 112 East 35th Street, LLC v. New York Society of the New Church* --- N.Y.S.2d ----, 2014 WL 394592 (N.Y.A.D. 1 Dept.), 2014 N.Y. Slip Op. 00590; *Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. v Congregation Yetev Lev D'Satmar, Inc.*, 9 NY3d 297, 301 [2007]; Religious Corporations Law § 12[9] ).

The Court decided the motion and cross-motion by ordering that the matter be stayed for a period of 90 days. Defendant was directed to make an application pursuant to Religious Corporations Law § 12[9] for judicial approval of the mortgage *nunc pro tunc* within the period of the stay. In the event that the defendant made a timely application pursuant to Religious Corporations Law § 12[9], the stay would continue until the application was decided. If the application was granted, plaintiff was directed to accept defendant's proposed answer. If the application was denied, or if defendant failed to make an application pursuant to Religious Corporations Law § 12 [9] within the original stay period, plaintiff's application for a default judgment would be granted and plaintiff would then settle judgment on notice.

On May 20, 2014, after the 90 day stay had expired, plaintiff submitted a proposed judgment. By notice of motion dated July 1, 2014, defendant made a motion pursuant to Religious Corporations Law § 12(1) and 12(9) for an order confirming the mortgage in question. Although the motion was untimely, the parties entered into a written stipulation allowing this Court to decide the motion on the merits.

Defendant's motion must be **DENIED**.

Religious Corporations Law § 12(1) provides:

A religious corporation shall not sell, mortgage or lease for a term exceeding five years any of its real property without applying for and obtaining leave of the court therefor pursuant to section five hundred eleven of the not-for-profit corporation law [N-PCO § 511] as that section is modified by paragraph (d-1)<sup>1</sup> of subsection one of section two-b of this chapter, except that a religious corporation may execute a purchase money mortgage or a purchase money security agreement creating a security interest in personal property purchased by it without obtaining leave of the court therefor.

N-PCO § 511 provides:

(a) To obtain court approval to sell, lease, exchange or otherwise dispose of all or substantially all its assets, a corporation shall present a verified petition to the supreme court of the judicial district, or the county court of the county, wherein the corporation has its office or principal place of carrying out the purposes for which it was formed. The petition shall set forth:

1. The name of the corporation, the law under or by which it was incorporated.
2. The names of its directors and principal officers, and their places of residence.
3. The activities of the corporation.
4. A description, with reasonable certainty, of the assets to be sold, leased, exchanged, or otherwise disposed of, or a statement that it is proposed to sell, lease, exchange or otherwise dispose of all or substantially all the corporate assets more fully described in a schedule attached to the petition; and a statement of the fair value of such assets, and the amount of the corporation's debts and liabilities and how secured.

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<sup>1</sup>Religious Corporations § 2-b (d-1) provides:

Notwithstanding any provision of this chapter or the not-for-profit corporation law, any church referred to in subdivision two, three, four, five, five-a, five-b, five-c, or six of section twelve of this chapter shall not be required to give notice to the attorney general of any application required by subdivision one of section twelve of this chapter or any application or petition required under section five hundred ten or section five hundred eleven of the not-for-profit corporation law.

5. The consideration to be received by the corporation and the disposition proposed to be made thereof, together with a statement that the dissolution of the corporation is or is not contemplated thereafter.
6. That the consideration and the terms of the sale, lease, exchange or other disposition of the assets of the corporation are fair and reasonable to the corporation, and that the purposes of the corporation, or the interests of its members will be promoted thereby, and a concise statement of the reasons therefor.
7. That such sale, lease, exchange or disposition of corporate assets, has been recommended or authorized by vote of the directors in accordance with law, at a meeting duly called and held, as shown in a schedule annexed to the petition setting forth a copy of the resolution granting such authority with a statement of the vote thereon.
8. Where the consent of members of the corporation is required by law, that such consent has been given, as shown in a schedule annexed to the petition setting forth a copy of such consent, if in writing, or of a resolution giving such consent, adopted at a meeting of members duly called and held, with a statement of the vote thereon.
9. A request for court approval to sell, lease, exchange or otherwise dispose of all or substantially all the assets of the corporation as set forth in the petition.

Courts have construed strictly construed Religious Corporations Law § 12 and have held that compliance with it is “absolutely necessary” and “indispensable” to the validity of the transaction (*Dudley v Congregation of Third Order of St. Francis*, 138 NY 451, 457; *see, also, Bernstein v Friedlander*, 58 Misc 2d 492; *Wilson v Ebenezer Baptist Church*, 17 Misc 2d 607). Here, defendant’s submissions did not meet the statutory requirements set forth in N-PCO § 511. Nowhere in defendant’s submissions is there an attempt to provide “[a] A description, with reasonable certainty, of the assets to be [mortgaged] . . . and a statement of the fair value of such assets, and the amount of the corporation's debts and liabilities and how secured” (N-PCO § 511[4]). Nor did defendant establish that the mortgage had “been recommended or authorized by vote of the directors in accordance with law, at a meeting duly called and held, as shown in a schedule annexed to the

petition setting forth a copy of the resolution granting such authority with a statement of the vote thereon” (N-PCO § 511[7]). Having failed to meet these very basic requirements, defendant’s application must be denied.

The Court must reject defendant’s contention that it is entitled to *nunc pro tunc* approval of the mortgage pursuant to Religious Corporations Law § 12[9] given the aforementioned shortcomings. While Religious Corporations Law § 12[9] allows for *nunc pro tunc* judicial approval of a mortgage given by a religious corporation, such approval may be give only after “due proceedings had in accordance with [Religious Corporations Law § 12]” (Religious Corporations Law § 12[9]). In the Court’s view, this would require, at the very least, substantial compliance with N-PCO § 511.

The Court realizes that it would be nearly impossible for the defendant to comply with the requirements of N-PCO § 511 given the adversarial relationship that now exists between the parties. This, however, is not a valid ground to grant the application. .

For all of the above reasons, it is hereby

**ORDERED** that defendant’s motion is **DENIED** and plaintiff’s motion to enter a judgment declaring the mortgage void is **GRANTED**.

Plaintiff is directed to settle judgment on notice.

Dated: July 8, 2015



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

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

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