

**Governing Body Commn. of the Intl. Socy. of
Krishna Consciousness v Britten**

2018 NY Slip Op 32787(U)

October 29, 2018

Supreme Court, Kings County

Docket Number: 524895/2017

Judge: Dawn M. Jimenez-Salta

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At an IAS Term, Part 88 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 29th day of October, 2018.

PRESENT:

HON. DAWN JIMENEZ-SALTA,
Justice.

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GOVERNING BODY COMMISSION OF THE INTERNATIONAL SOCIETY OF KRISHNA CONSCIOUSNESS, WILLIAM TRIPP SUCZEK, PRAGNESH SURTI, FRANK LENNA, GITA DAS, TAPAS KUMAR MISTRI, MINAL PATEL, MAHUA PURAKAIT, DHRUBA SAHA, and BHARATI CENTER, INC.,

Plaintiffs,

- against -

DAVID BRITTEN, HEATHER BRITTEN, ARTHUR CUFFEE, ALEXIS CUFFEE, DAVID JONES, GRIGORY FOOKS, HEMWATTEE SINGH, SHAILA TRIVEDI, FINDER NOVICK KERRIGAN LLP, and MARK J. WEINSTEIN,

Defendants.

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DECISION/ORDER

Index No. 524895/2017

Motion Seq. No. 2

KINGS COUNTY CLERK
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Recitation, as required by *CPLR 2219(a)*, of the papers considered in the review of:

1) Plaintiffs Governing Body Commission of the International Society of Krishna Consciousness, William Tripp Suczek, Pragnesh Surti, Frank Lenna, Gita Das, Tapas Kumar Mistri, Minal Patel, Mahua Purakait, Dhruba Saha (“Plaintiffs”), and Bharati Center Inc.’s (“Bharati Center”) Motion for Summary Judgment, pursuant to *CPLR 3212*, for an Order:

(a) declaring that Plaintiffs are the rightful directors of Bharati Center; that Defendant David Britten is neither a director nor temple president of Bharati Center; and that Defendants Heather Britten, Arthur Cuffee, Alexis Cuffee, David Jones, Grigory Fook, Hemwattee Sing, and Shaila Trivedi (collectively, “Defendants”) are no longer directors or officers of Bharati Center; and

(b) enjoining Defendants from holding themselves out or acting as officers, directors, or representatives of Bharati Center; interfering with Plaintiffs’ oversight and supervision of the operation of Bharati Center; interfering with the worship of any congregant of Bharati Center at Bharati Center’s house of worship; attempting to sell the real property of Bharati Center; retaining any books or records of Bharati

Center, together with accompanying Memorandum of Law and Statement of Facts, dated June 27, 2018;

- 2) Defendants’ Affirmation in Opposition, together with accompanying Memorandum of Law in Opposition, dated July 18, 2018;
- 3) Defendant Heather Britten’s Affidavit in Opposition, dated July 18, 2018; and
- 4) Plaintiffs’ Reply Affirmation, dated July 31, 2018, all of which submitted August 1, 2018.

Papers Considered:

Numbered:

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| <p>Notice of Motion, Affidavit/Affirmations, Memorandum of Law, and Exhibits Annexed</p> <p>Affidavit/Affirmation in Opposition, Memorandum of Law, and Exhibits Annexed</p> <p>Affirmation in Reply.....</p> | <p>Plaintiffs 1, 2 [Exh. A-R], 3, 4</p> <p>Defendants 5 [Exh. A-D], 6</p> <p>Plaintiffs 7</p> |
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Upon the foregoing cited papers, the Decision/Order on this Motion is as follows: Plaintiffs’ motion for partial summary judgment pursuant to CPLR 3212 for an order seeking a declaration that William Tripp Sucek, Pragnesh Surti, Frank Lenna, Gita Das, Tapas Kumar Mistri, Minal Patel, Mahua Purakait, Dhruva Saha are the sole and rightful directors of Bharati Center; and, that as of July 18, 2017, Britten and the remaining Defendants are no longer directors or officers of Bharati Center is GRANTED. Defendants’ request for injunctive relief enjoining Britten and the remaining Defendants from (a) holding themselves out or acting as officers or directors of Bharati Center, (b) interfering with the oversight and supervision of Bharati Center, (c) interfering with any congregants attendance at worship, service, and other religious functions at Bharati Center’s house of worship, (d) attempting to sell the real property of Bharati Center, (e) acting as a signatory on the accounts of Bharati Center; and (e) compelling Defendants to turn over any book or records of Bharati Center in their possession is GRANTED.

BACKGROUND

This action arises out of a dispute between two factions of the International Society for Krishna Consciousness over the management and control of the ISKCON Radha Govinda Temple, incorporated as Bharati Center, Inc. (“Bharati Center”), following a proposed sale of its real property and assets [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

One group is comprised of David Britten (“Britten”), alleged president and director of Bharati Center, along with the remaining members of the original board and officers

including Heather Britten, Arthur Cuffee, Alexis Cuffee, Grigory Fooks, David Jones, Hemwatee Singh, and Shaila Trivedi (collectively, “Defendants”). It was this group who authorized the sale of the temple property located at 295-309 Schermerhorn Street in Brooklyn, New York (“Brooklyn Temple”) in August 2016. Britten and the board unanimously voted to recommend the sale of the Brooklyn Temple on behalf of Bharati Center for \$58,000,000 to EF Equities LLC, a Delaware limited liability corporation. The second group, including the Governing Body Commission of ISKCON (“GBC”), opposed the sale. A rival board of directors elected in 2017 with the support of the GBC also objected to the sale (collectively, “Plaintiffs”) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Each side contests the legitimacy of the other’s election and claims to be the rightful representatives of Bharati Center as a corporate entity and in religious matters [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

In a related special proceeding arising out of the same property dispute brought by Defendants pursuant to Religious Corporation Law § 12 (“RCL”) and Not-for-Profit Corporation Law § 511 (“N-PCL”), this Court previously declined to approve Defendants’ proposed sale of the Brooklyn Temple due to, *inter alia*, issues with the petition and supporting documentation. The Court also noted that there were issues concerning whether Defendants obtained the consents required by the Bylaws and internal governing documents of Bharati Center for the sale of the property (*see Matter of Bharati Center, Inc.*, index No. 2855/2017 [Sup Ct, Kings County 2018]) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Bharati Center’s Certificate of Incorporation and Bylaws

Bharati Center, formerly known as ISKCON of Long Island, Inc., is a New York religious corporation formed by the filing of a certificate of incorporation with the Nassau County Clerk’s Office in August 1982. According to the certificate, the purpose of Bharati Center is “the maintenance of places of worship and religious personnel in the State of New York” [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

On September 2, 1982, Bharati Center filed an amended certificate of incorporation, changing its name and principal location and place of business to 295-309 Schermerhorn Street in Brooklyn. The purpose of the religious corporation and procedure for approvals and consents was unchanged. Bharati Center’s bylaws were initially adopted in the same year [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

The operative bylaws (“Bylaws”) of Bharati Center provide that the board of directors must consist of between five and nine directors (Article V, Section 1). Directors are elected to three-year terms with no limitation on the number of terms that can be served. The powers of the board, listed in Article V, Section 6, include general supervision, direction, and control of the business affairs of the corporation. In order to be elected to the board, a candidate must be a congregational member, which requires, *inter alia*, a “sincere belief in the teachings of Hare Krishna” and regular attendance at temple services. All voting rights are vested in the board of directors. The board is also responsible for the appointment of a

president of Bharati Center [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Article V, Section 5 of the Bylaws provides that a director may be removed by a two-thirds vote of the balance of the board for failing to perform duties, consistent failure to attend duly called meetings, or for failing to maintain the minimum requirements of directorship as discussed above [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

The Bylaws grant the highest decision-making authority to the GBC and require that individual temples, such as Bharati Center, follow its teachings and instructions. Similar to the certificate of incorporation, Article II states that Bharati Center's purpose is to "perpetually and regularly maintain" service of the faith "in accordance with the teachings and instructions of His Divine Grace A.C. Bhaktivedanta Swami Prabhupada, Founder-Acarya of the International Society for Krishna Consciousness" ("the founder") [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Article III provides that Bharati Center, though legally and financially independent, must not conduct itself "in any way contrary to the ecclesiastical policies of ISKCON, as established by the GBC." This is reiterated in Article IX, Section 8, regarding the guidelines for temple worship, where it is stated that services must follow the standards declared by ISKCON and the GBC [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

For transactions involving real property, such as buying, selling, or encumbering real property assets, the board "must actively seek the approval of [the GBC] or a three-man subcommittee of the GBC specifically empowered to advise on real property transactions for such sale . . ." (Article IX, Section 7). There is no provision prohibiting the GBC from withdrawing its consent once given [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Though ISKCON lacks a constitution, the management structure of local temples and their relationship with the GBC is described in the ISKCON Law Book and the writings of ISKCON's founder. The ISKCON Law Book¹ is a body of canon law drafted by the GBC consisting of rules and regulations for the internal discipline and government of ISKCON. A number of writings of the founder, including the document entitled "Direction of Management," his will, and correspondence (attached as exhibits to the complaint, motion papers, and discussed at length in this Court's previous Decision/Order under index No. 2855/2017 ("April 2018 Decision")) further evidence that ISKCON was intended to be a hierarchical organization with the GBC as its ultimate authority at the top [Plaintiffs 1;

¹ At its annual meeting, the GBC passes resolutions which are thereafter periodically codified as ISKCON law. The purpose of the ISKCON Law Book is "for there to be a uniform understanding of the rules, regulations and procedures of ISKCON that are binding on all ISKCON members" (*see Kelley v Garuda*, 57 Misc 3d 1212[A], 2017 NY Slip Op 51393[U], at *7 [Sup Ct, Nassau County 2017]) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Section 5.5 of the ISKCON Law Book details the procedure for initiating disciplinary action against directors, officers, and other ISKCON leaders. The GBC may discipline any leader by a majority vote of the GBC body. Section 5.5.3 provides a number of grounds for such censure, including, *inter alia*, willful violation of GBC resolutions, duplicitous dealings with devotees, misuse of funds and gross mismanagement, degradation of temple standards, and “vilification of ISKCON or the GBC Body.” Subsequent sections discuss sanctions, including probation (5.5.4), suspension (5.5.5), and removal (5.5.6) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

The GBC is empowered to remove an ISKCON leader immediately in cases of severe spiritual or moral deviation, rebellion against the authority of the GBC, or where there is conduct that endangers ISKCON’s stability or security [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Section 10 (“ISKCON Temples and Affiliates”) and Section 11 (“ISKCON Immovable Properties”) of the ISKCON Law Book discuss the management of real property and the relationship between ISKCON and local temples, such as Bharati Center. Section 10.4.4 prohibits alienation of temple property without the expressed written consent of the GBC.

The GBC is also specifically vested with veto power over any proposed sale, mortgage, transfer, encumbrance or lease in Section 10.4.4 [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Other documentary evidence submitted by the parties, including the founder’s writings on the internal governance of ISKCON and his will, indicate that ISKCON is a hierarchical religious organization in which local temples are subject to the constitution, canons, rules, and decisions of the GBC (*see Kelley v Garuda*, at *16) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

FACTS AND PROCEDURAL HISTORY

The current controversy concerning the management, control, and authority over Bharati Center arose after the original Bharati Center board (Defendants) voted to sell the Brooklyn Temple to EF Equities LLC (“EF Equities”). Although the exact date that Plaintiffs were informed of the sale is in dispute, it appears that they first became aware between August 2015 and January 2017 (when the GBC issued its first resolution directing Defendants to cease their efforts to sell the Brooklyn Temple).

The Proposed Sale

At the January 2017 annual meeting, the GBC notified Defendants via resolution of its disapproval of the sale. The GBC also directed Defendants to discontinue any further efforts to sell the Brooklyn Temple. In the same resolution, pursuant to its powers codified in the ISKCON Law Book, the GBC constituted an *ad hoc* committee called the “Brooklyn Temple

Sale Committee” (“Committee”) dedicated to handling matters related to the proposed sale of the Brooklyn Temple. At a GBC meeting the following month, the Committee advised against the sale. A special meeting at which local members of Bharati Center were invited to share their concerns was also scheduled to be held in Brooklyn. Neither Britten nor the remaining Defendants attended [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Shortly thereafter, on March 19, 2017, Defendants called a special corporate meeting pursuant to Article IX, Section 7(B),² where a vote of reconsideration was held to override the GBC’s decision. Defendants again unanimously voted to approve the sale [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

On July 18, 2017, the GBC again communicated its disapproval of the sale by resolution adopted pursuant to Section 5.5 of the ISKCON Law Book. The resolution purported to remove Britten as director and temple president for misconduct, including abuse of authority, improperly causing Bharati Center to enter into a contract to sell the Brooklyn Temple without the consent of the GBC, and disregarding GBC resolutions and directives. The resolution also stated that Britten impermissibly took steps to disaffiliate Bharati Center from ISKCON, failed to fulfill his religious responsibilities as temple president, and impermissibly banned individuals opposed to the sale from worship at the Brooklyn Temple [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Britten’s removal was subsequently reaffirmed by the GBC in resolutions adopted on October 9, 2017 and November 4, 2017. In the November 2017 resolution, the Committee, pursuant to the authority conveyed to it by the GBC, unanimously voted to remove the remaining Defendants from the board in accordance with procedures outlined in the ISKCON Law Book on the grounds that they continued to recognize and aid Britten as director and temple president, and refused to follow the directives of the GBC (including those regarding the proposed sale of the Brooklyn Temple). A new board of directors, the plaintiffs in this action, were appointed in their place [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Finder Novick Kerrigan LLP (“Finder Novick”) and Mark J. Weinstein, Esq (“Weinstein”) were also directed to cease holding themselves out or acting as legal counsel for Bharati Center. Finally, the GBC directed Defendants to revoke any alleged bans preventing individuals opposed to the sale from worshipping at the Bharati Center house of worship [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

² If the GBC does not approve of the transaction, Section 7(B) allows the board to reconsider the resolution at its next meeting. If any director votes against the proposed transaction, it is considered null and void [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

After receiving notification of their removal, Defendants, on behalf of Bharati Center, petitioned the Office of the Attorney General (“OAG”) for approval of the sale as required by RCL § 12 and N-PCL § 511 before seeking judicial approval.³ In opposition to the petition, the GBC advanced a number of objections, arguing that the GBC body did not approve the sale and that Defendants did not have the authority to bring the petition or act on behalf of the corporation because they were previously removed as directors and officers by the GBC. The GBC also challenged the sale on the ground that it did not promote the best interest of Bharati Center and its congregants. Finally, the GBC observed that no concrete plans for the temporary or permanent relocation of the congregation or its religious artifacts had been provided [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

After its review of the petition and response papers, the OAG declined to provide a letter of “no objection” to the sale. The OAG noted that it had received numerous complaints regarding the proposed transaction that called into question whether all of the consents required by the governing documents of Bharati Center had been obtained. The OAG also indicated that there was insufficient information regarding the planned use of proceeds from the transaction and whether the sale was in the best interest of Bharati Center [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

The Petition

On October 23, 2017, Bharati Center, under the administration of Britten and Defendants, commenced the previously discussed separate proceeding under index No. 2855/2017 by the filing of a petition pursuant to N-PCL §§ 510 and 511 and RCL § 12 (“Petition”) to obtain the required judicial approval of the sale [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

In the April 2018 Decision, this Court denied approval of the proposed sale to EF Equities, holding that the supporting documentation and objections of the GBC and newly appointed board of directors raised serious issues regarding whether the requisite approval of the sale by the GBC was obtained and whether the transaction was reasonable and in furtherance of the best interest of the corporation and congregants (*see Matter of Bharati Center, Inc.*, at 18, 20). Accordingly, the Petition was dismissed (*Id.* at 20) [Plaintiffs 1;

³ RCL § 12 and N-PCL § 511 require that notice of a petition be served on the OAG prior to seeking judicial approval. Many parties will voluntarily submit their papers to the OAG in advance of filing in court. If after completing the review, the OAG has no objection to the transaction, the OAG will provide written confirmation in the form of a letter of “no objection” and will waive the statutory requirement of notice to the OAG at the time of filing (*see* N-PCL §§ 510, 511; *see also* 64th Assocs., L.L.C. v Manhattan Eye, Ear & Throat Hosp., 2 NY3d 585 [2004]) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Plaintiffs' Action for Declaratory and Injunctive Relief

In December 2017, while the special proceeding was ongoing, Plaintiffs filed the summons and complaint commencing the subject action alleging six causes of action on behalf of Bharati Center, ISKCON under the administration of the GBC, and the remainder of the purported rightful Bharati Center board of directors against Defendants, including Britten, the alleged former directors and officers, and Bharati Center's purported legal counsel throughout this litigation and the related proceeding, FINDER NOVICK and WEINSTEIN [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Plaintiffs allege that Defendants have impermissibly endeavored to retain their positions as president, directors, and officers of Bharati Center despite their legitimate removal from those positions by the GBC, ISKCON's highest managing authority, and the current Bharati Center board consisting of plaintiffs William Tripp Suczek, Pragnesh Surti, Frank Lenna, Gita Das, Tapas Kumar Mistri, Minal Patel, Mahua Purakait, and Dhruva Saha [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

The complaint seeks, *inter alia*, a determination that Defendants are the sole and rightful directors of Bharati Center and, that as of July 18, 2017, Britten and the remaining Defendants are no longer directors or officers of Bharati Center. Plaintiffs also seek an injunction against Defendants enjoining them from holding themselves out or acting as officers, directors, or representatives of Bharati Center, interfering with Plaintiffs' governance of Bharati Center, interfering with the worship of the congregants of Bharati Center, and making any attempts to disaffiliate Bharati Center from ISKCON or sell the Brooklyn Temple [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Defendants filed their answer on February 22, 2018. Notably, Defendants did not include as affirmative defenses Plaintiffs' lack of standing or capacity to sue, and failed to question the legal entity status of ISKCON or the GBC (Defendants' answer ¶¶ 93-103). They similarly failed to reject the complaint as defective for lack of or improper verification at any time [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Prior to the filing of Defendants' answer, Plaintiffs moved by order to show cause to enjoin Britten and the director-defendants from banning selected congregants (namely those opposed to the proposed sale) from attendance at worship and religious services held in the Bharati Center house of worship pending resolution by this Court as to the rightful composition of the board and control of Bharati Center. In support, Plaintiffs attached as

exhibits a number of affirmations detailing alleged bans and incidents of harassment by Britten and the director-defendants or their agents [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

After review, by order dated April 1, 2018, this Court issued a preliminary injunction enjoining defendants David Britten, Heather Britten, Arthur Cuffee, Alexis Cuffee, David Jones, Grigory Fooks, Hemwatee Singh and Shaila Trivedi, along with their agents or representatives, from directly or indirectly interfering with any congregant's attendance at worship, service and other religious functions in the Bharati Center house of worship [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Plaintiffs' Motion for Summary Judgment

On June 27, 2018, Plaintiffs moved for summary judgment on their first cause of action for declaratory relief and fourth cause of action for injunctive relief. Plaintiffs contend that the complaint, attached exhibits, findings made in this Court's previous April 2018 Decision, combined with the admissions contained in the answer, remove all questions of fact with respect to the first and fourth causes of action and make it ripe and ready for disposition by summary judgment [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

According to Plaintiffs, the factual record plainly demonstrates the GBC's hierarchical authority over local temples like Bharati Center. In support, they cite the findings of this Court's April 2018 Decision. In the decision, this Court, citing a Nassau County Supreme Court case involving a property dispute between a local Hare Krishna congregation and the GBC over a Freeport temple (*see Kelley v Garuda*, 2017 NY Slip Op, at *16), found that ISKCON is a hierarchical religious organization in which local temples, such as Bharati Center, are subject to the rules and decisions of the GBC. The Bharati Center Bylaws and other secular internal governing documents are attached to the complaint, moving papers, and were exhaustively examined in this Court's April 2018 Decision [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

In particular, Plaintiffs quote the following findings from the April 2018 Decision:

“The operative bylaws of Bharati Center were duly adopted by its trustees on August 4, 1987 at a scheduled meeting of the corporation. They reflect the authority of the GBC over Bharati Center, reciting that the GBC is the highest ecclesiastical authority within ISKCON and Bharati Center must follow the teachings and instructions of ISKCON . . .

The position of the GBC as ultimate managing authority of ISKCON also establishes that Bharati Center is in fact subject to the constitution, canons, rules, and resolutions of the GBC . . .

Bharati Center is required to abide by the Bylaws and aforementioned governing documents, including those rules limiting the use and control over real property and restricting the use of such property for the purposes of ISKCON. Various provisions of the Bylaws, resolutions, and ISKCON Law Book indicate that Bharati Center and local Hare Krishna temples expressly promised to abide by the rules of ISKCON under the administration of the GBC. Accordingly, the Court finds that Bharati Center was required to seek the approval of the GBC and was bound by the GBC's decision [with respect to the sale of the property]" (see *Matter of Bharati Center, Inc.*, at 4, 17-18, 18) [internal citations and quotations omitted] [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Thus, according to Plaintiffs, there is ample support in the factual record to establish that (1) Britten and Defendants were duly removed as directors and officers of Bharati Center on July 18, 2017 and (2) the current directors were duly named to the board on November 4, 2017 in accordance with the secular governing documents of Bharati Center and ISKCON such that summary judgment should be granted [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

If the Court finds that Defendants have been lawfully removed and replaced in compliance with the Bylaws and other internal governing documents, Plaintiffs argue that they are entitled to summary judgment on their fourth cause of action for injunctive relief against Britten as well [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Plaintiffs assert that they will be irreparably harmed absent an injunction enjoining Defendants from selling the Brooklyn Temple and from the continued harassment or banning of congregants seeking to worship at the Bharati Center house of worship. Moreover, they argue that, being a not-for-profit organization dependent upon donations, Bharati Center's financial well-being is subject to great adversity in the event those congregants or devotees are banned or discouraged from coming [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Second, Plaintiffs argue that the equities are in their favor because they seek to advance the stated charitable mission of Bharati Center by providing a place of worship for its congregants free from interference, and merely seek to maintain the status quo by prohibiting a sale that would not be in the best interest of Bharati Center or its congregants. Plaintiffs observe that this is especially important because the property is held in trust for ISKCON as a whole. Plaintiffs' also assert that Defendants are not and have never been owners of Bharati Center (a not-for-profit religious corporation) and, as such, would suffer no financial or other harm if they were enjoined from selling the Brooklyn Temple, resulting in no prejudice on their part. Finally, they argue that no monetary damage can remedy the ongoing and improper refusal of Defendants to relinquish control of the operations and accounts of

Bharati Center [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Regarding the previously granted preliminary injunction, Plaintiffs assert that they merely seek a logical extension of the prohibition contained in the April 19, 2018 order, to allow all congregants to attend worship, services, and other religious functions at the Bharati Center house of worship regardless of viewpoint or position with respect to the proposed sale. They note that such a narrowly tailored injunction would not interfere with the legitimate interest temple leaders of Bharati Center have in maintaining order in the house of worship [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

In opposition, Defendants argue that there are material issues of fact related to the ultimate authority of the GBC to control and direct Bharati Center and its board of directors which preclude summary judgment. Defendants assert that, although Bharati Center must follow the teachings of the founder and ISKCON, it is financially, legally, and managerially independent of ISKCON. In support, Defendants cite Article III, Section 2 (“Relationship with ISKCON”) of its Bylaws [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

First, Defendants assert that they are the duly elected directors pursuant to the Bylaws and that any actions taken with respect to the management, operation and proposed sale of the Brooklyn Temple were conducted according to the certificate of incorporation and Bharati Center Bylaws. Defendants allege that Plaintiffs acknowledge this in their own complaint in ¶¶ 25-32 [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Defendants also observe that it is undisputed that the claims of the individual plaintiffs as to their status as directors depend on the legitimacy of the GBC’s claim of authority and the alleged hierarchical nature of ISKCON, which they argue cannot be determined without further discovery. Though they acknowledge the GBC is the ecclesiastical head of ISKCON, they argue this alone does not establish that it is empowered to unilaterally remove directors or officers of Bharati Center or local temples [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Finally, Defendants raise issues concerning justiciability and attempt to distinguish *Kelley v Garuda* [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Defendants also belatedly assert that there are issues concerning lack of standing and capacity to sue, though these defenses were not raised in their answer. They further observed during oral argument that the complaint was not verified, and claimed that the complaint was required to be verified under the CPLR, though no specific section or case law was provided in support. Defendants’ papers also assert that Plaintiffs have failed to prove that GBC and

ISKCON are corporate entities registered to do business in New York [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

In summary, Defendants' position is that, while the GBC may be vested with powers over ecclesiastic matters per the internal governing documents of Bharati Center and ISKCON, Bharati Center is legally, managerially and financially independent of ISKCON, a foreign entity that neither owns nor is a parent corporation of Bharati Center under New York law. In order to discern the validity of these claims, further discovery and depositions are necessary [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

DISCUSSION

Standard of Review

Summary judgment is a drastic remedy and should be granted only when it is clear that no triable issues of fact exist (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). The moving party bears the burden of *prima facie* showing its entitlement to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any material issue of fact (*see* CPLR 3212 [b]; *Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]). Failing to make that showing requires denying the motion, regardless of the adequacy of the opposing papers (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 502 [2012]; *Ayotte v Gervasio*, 81 NY2d 1062 [1993]). Making a *prima facie* showing then shifts the burden to the opposing party to produce sufficient evidentiary proof to establish the existence of material factual issues (*see Alvarez*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Accordingly, issue-finding rather than issue-determination is the key in deciding a summary judgment motion (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, [1957], *rearg denied* 3 NY2d 941 [1957]). "The court's function on a motion for summary judgment is to determine whether material factual issues exist, not resolve such issues" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks omitted]).

Analysis

In this case, Plaintiffs are entitled to summary judgment on their first and fourth causes of action against Defendants.

As this Court previously held in its April 2018 Decision, ISKCON is a hierarchical religious organization in which local temples are subject to the laws, rules, and decisions of its governing body, the GBC (*see Matter of Bharati Center Inc.*, at 17, citing *Kelley v Garuda*, 2017 NY Slip Op, at *16). In *Kelly v Garuda*, Justice Randy Sue Marber exhaustively researched ISKCON's top-down government structure, the internal governing documents of Bharati Center, and the laws of its denominational organization, ISKCON, as

memorialized in the resolutions of the GBC and ISKCON Law Book. It is clear from these documents that the GBC, as the highest managing authority in ISKCON, is empowered to remove directors, officers, and leaders of local temples for reasons including “willful violation of GBC resolutions, duplicitous dealings with devotees, misuse of funds and gross mismanagement, degradation of temple standards. . . and vilification of ISKCON or the GBC Body” (see *Matter of Bharati Center, Inc.*, at 6) [internal quotations omitted]).

The *Kelley v Garuda* case itself contains examples of the GBC body exercising its ability to remove and replace directors and officers of the local Freeport temple on the ground that certain leaders were planning to organize and hold an election of the board in violation of various directives and orders issued by the GBC (*Kelley v Garuda*, 2017 NY Slip Op, at *10-11). Thereafter, the court held that it would defer to the resolutions passed by the GBC in appointing the new directors and expelling the former directors (see *id.* at *16). These matters are susceptible to analysis by neutral principles of law without resort to matters of religious doctrine (see *Episcopal Diocese of Rochester v Harnish*, 11 NY3d 340, 350 [2008]; *Presbytery of Hudson River of Presbyt. Church v Trustees of First Prebyt. Church and Congregation*, 72 AD3d 78 [2d Dept 2010]).

In this case, the issue of the control and management of Bharati Center’s is a matter of corporate governance capable of being resolved through secular analysis of the Bharati Center’s Bylaws, certificate of incorporation, internal governing documents, and the laws of ISKCON (*Kelley v Garuda*, at *16, citing *Jones v Wolf*, 443 US 595, 602 [1979]; *First Presbyterian Church of Schenectady v United Presbyterian Church*, 62 NY2d 110, 114 [1984]; *Park Slope Jewish Ctr. v Congregation B’Nai Jacob*, 90 N.Y.2d 517, 521 [1997]; *Geeta Temple-Ashram v Styandji*, 142 AD3d 1132, 1136 [2d Dept 2016]⁴) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

By examination of the language of the pertinent Bylaws, ISKCON rules and regulations, writings of the founder, this Court determines that in this dispute over the management and control over Bharati Center, the GBC, as the primary adjudicatory authority and governing body of ISKCON, is empowered to remove and replace directors in violation of its duly enacted resolutions and laws [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Contrary to Defendants’ contentions, Plaintiffs’ partial summary judgment motion is not based on or arising out of allegations of heretical practices committed against ISKCON and

⁴ These cases differ from those inherently intertwined with religious matters such as *Temple-Ashram v Styandji* (84 AD3d 1158 [2d Dept 2011]) (where the first cause of action for declaratory relief as to leadership of temple was deemed non-justiciable because it would have required a judicial determination as to which temple leader was the spiritual successor to the previous temple leader) or *Congregation Yetev Lev D’Satmar, Inc. v Kahana* (9 NY3d 282 [2007]) (involving a feud between rival boards of directors arising out of a dispute over which was rightful successor to Grand Rabbi).

the GBC [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Both parties have presented an abundance of documentary evidence in this action and the related proceeding, including over fifty exhibits, bylaws and certificates of incorporation, ISKCON resolutions and laws, briefs, and a series of sworn affidavits and affirmations from which it can be concluded that Plaintiffs are entitled to partial summary judgment declaring that Defendants David Britten, Heather Britten, Arthur Cuffee, Alexis Cuffee, David Jones, Grigory Fooks, Hemwatee Sing, and Shaila Trivedi do not control Bharati Center as directors or officers, and were duly removed in accordance with ISKCON law and procedure on July 18, 2017 and October 9, 2017, respectively [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Thereafter, on November 4, 2017, pursuant to the authority conveyed to it by the GBC, the Committee named plaintiffs William Tripp Suczek, Pragnesh Surti, Frank Lenna, Gita Das, Tapas Kumar Mistri, Minal Patel, Mahua Purakait, and Dhruba Saha as the new members of the Bharati Center board [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

The Court rejects Defendants' efforts to distinguish *Kelley v Garuda*. During the extensive litigation leading up to Justice Marber's *Kelley v Garuda* decision in 2017, an earlier Decision/Order in the case issued by Justice Roy S. Mahon was modified by the Appellate Division, Second Department in 2007 (*see Kelley v Garuda*, 36 AD3d 593 [2d Dept 2007]). Contrary to Defendants interpretation, the Appellate Division's decision in fact characterizes the property dispute between ISKCON and the local Freeport temple as one of corporate usurpation and trespass, and not religious in nature (*see id.* at 595) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

The Second Department held that the lower court erred in dismissing the causes of action alleging trespass and usurpation of corporate authority as non-justiciable due to discussion of heretical practices in the pleadings and other legal papers (*Id.* at 596). Instead, the Second Department held that:

“Despite some language in the pleadings and much argument in the motion papers on religious matters, the causes of action alleging trespass and usurpation are based, essentially, on legal principles of corporate government and property. Resolution of these issues hinges on a determination of who owns and has authority over the Temple and its grounds, the Governing Body Commission of ISKCON or the defendants. The defendants failed to establish that the court could not resolve these issues by applying neutral principles of law to analyze the deed to the property, the certificate of incorporation of ISKCON, the terms of the by-laws, and the documents submitted by the parties. . . .” (*Id.* at 595).

Defendants' arguments concerning defective verification and lack of standing are similarly unavailing. At the outset, it is clear that Defendants failed to establish that the complaint was required to be verified (*see* Siegel, N.Y. Prac. § 232 at 403 [6th Ed.] ("Verification is largely optional under the CPLR . . ."). Assuming that the complaint was required to be verified, Defendants failed to reject the complaint, dated December 27, 2017, as required by CPLR 3022, as unverified or defectively verified at any time. Instead, Defendants proceeded to file an answer on February 22, 2018 and proceed to litigate the case (*see Gaffey v Shah*, 131 AD3d 1006, 1006-1007 [2d Dept 2015]; *Pantaleon v. Ogilvie*, 23 AD3d 360, 460-361 (2d Dept 2005); *see also* Siegel, N.Y. Prac. § 236 at 407). In addition, Defendants fail to specify any prejudice suffered as a result of the alleged lack of or defective verification, which must be shown even if verification was required (*Gaffey v Shah*, at 1007; *Rozz v Law Offices of Saul Kobrick, P.C.*, 134 AD3d 920, 921 [2d Dept 2015]). In any event, they have waived their opportunity to do so now at this stage (*see Gaffey v Shah*, at 1007) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Defendants' arguments concerning lack of capacity or standing to sue should have been raised in a pre-answer motion to dismiss or asserted in the answer within the almost eight months since it was filed (*see Bowen v Nassau County*, 135 AD3d 800, 801 [2d Dept 2016]; *Deutsche Bank Nat. Trust Co. Hussain*, 78 AD3d 989, 990 [2d Dept 2010] [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7]).

Plaintiffs also move for partial summary judgement on their fourth cause of action for a permanent injunction preventing Defendants from interfering with Plaintiffs' use and enjoyment of the Brooklyn Temple, from interfering with any congregant attending services or worship at Bharati Center's house of worship, and from attempting to sell the real property at issue, the Brooklyn Temple. As with the analysis of Plaintiffs' first cause of action, the Court may intercede to decide such a dispute so long as it is possible to do so through the application of neutral principles of law (*see First Presbyterian Church of Schenectady Church*, at 114) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Injunctive relief may be granted only where the movant demonstrates that he or she will suffer irreparable harm if the status quo is not maintained while the case is being decided (*see 306 Rutledge, LLC v City of New York*, 90 AD3d 1026, 1028 [2d Dept 2011], quoting *Icy Splash Food & Beverage, Inc. v Henckel*, 14 AD3d 595, 596 [2d Dept 2005]; *Church of God Pentecostal Fountain of Love, MI v Iglesia de Dio Pentecostal, MI*, 27 AD3d 685, 686-687 [2d Dept 2006]) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

The main distinction between a preliminary injunction and a permanent injunction is essentially procedural in that the former is issued during the pendency of the action and the later is issued upon a final determination for the protection of rights on a continuing basis properly subject to such relief against future harm (*see Presbytery of Hudson Riv of Presbyt.*,

72 AD2d at 96; *Kelley v Garuda*, 2017 Slip Op, at *18) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

To be entitled to a preliminary injunction, the movant must establish (1) probability of success on the merits, (2) irreparable injury in the absence of an injunction, and (3) a balancing of the equities in the favor of the movant (*see, e.g., Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Glorious Temple Church Of God in Christ v Dean Holding Corp.*, 35 AD3d 806, 807 [2d Dept 2006]; *National Church of God of Brooklyn, Inc. v Carrington*, 2017 NY Slip Op 51007[U], at *3 [Sup Ct, Kings County 2017]; *see also* CPLR 6301) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

First, Plaintiffs have a likelihood of success on the merits based on the previous findings of this Court and Justice Marber in *Kelley v Garuda*. In *Kelley v Garuda*, Justice Marber extensively discusses *First Presbyt. Church of Schenectady v United Presbyt. Church* and its progeny, which establish that Bharati Center holds its property in trust for ISKCON under the administration of the GBC. Moreover, the ISKCON Law Book expressly requires that member temples hold real property and other assets in trust for the benefit of ISKCON (*see Kelley v Garuda*, at *17) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Second, Plaintiffs will be irreparably injured should Defendants continue to control and sell the Brooklyn Temple. If Defendants sell, mortgage, or otherwise encumber the Brooklyn Temple, the status quo will be seriously disrupted and the congregation, by Defendants' own admission in the Petition (*see Matter of Bharati Center, Inc.*, at 11), could be without a place of worship for an extended period of time while a replacement location is established (*see also Kelley v Garuda*, 36 AD3d at 597) ("It is clear that the plaintiffs would suffer irreparable injury should the defendants sell, mortgage, or otherwise encumber the property of ISKCON, including the temple, and that an injunction on such action is necessary so as to preserve the status quo."); *Church of God Pentecostal Fountain of Love MI*, 27 AD3d at 687) [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Finally, this Court finds that the balance of equities falls with Plaintiffs in that the Brooklyn Temple is held in express trust for ISKCON under the administration of GBC. Defendants claim no personal ownership of the real property or other assets of Bharati Center. (*see, e.g., Episcopal Diocese of Rochester v Harnish*, 2006 NY Slip Op 52600[U], at *12-13 (Sup Ct, Monroe County 2006) ("Plaintiffs have established that they would likely succeed on the merits. In addition, this court finds that the balance of the equities rests with plaintiffs, especially since the property is held in trust for the National Church and the Diocese, and defendants have no claim to the real and personal property. Moreover, plaintiffs cannot be fully recompensed by a monetary award for defendants actions, and thus there is no adequate remedy at law. Plaintiffs' request for an injunction is granted.") [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

Based on neutral principles of law, this Court finds that Plaintiffs are entitled to summary judgment on their fourth cause of action for a permanent injunction preventing Defendants from interfering with Plaintiffs' and the congregation's use and enjoyment of the Brooklyn Temple, from interfering with any congregant attending services or worship at Bharati Center's house of worship, and from attempting to sell the real property at issue, the Brooklyn Temple. [Plaintiffs 1; Plaintiffs 2, Exh. A-R; Plaintiffs 3; Plaintiffs 4; Defendants 5, Exh. A-D; Defendants 6; Plaintiffs 7].

CONCLUSION

In light of the foregoing, Plaintiffs have established that they are entitled to judgment as a matter of law on their first cause of action for declaratory relief with respect to the status of the newly appointed directors by the GBC, removal of Defendants, and to the effect that Defendants no longer possess governance rights in Bharati Center. The Court shall defer to the findings and resolutions passed by the GBC concerning Defendants and their removal, and the appointment thereafter of the current plaintiff-directors.

The branch of Plaintiffs' partial summary judgment motion seeking injunctive relief enjoining Defendants from interfering with Plaintiffs' and the congregation's use and enjoyment of the Brooklyn Temple, from interfering with any congregant attending services or worship at Bharati Center's house of worship, and from attempting to sell the Brooklyn Temple is granted. The granting of an injunction permanently enjoining the defendant-directors from holding themselves out or acting as officers, directors, or representatives of Bharati Center, interfering with Plaintiffs' oversight and supervision of Bharati Center's operations, and acting as a signatory on Bharati Center's accounts or retaining any of its books or records naturally follows this Court's findings, and is therefore also granted. Accordingly, it is

ORDERED that Plaintiffs' motion (Motion Seq. No. 2) seeking summary judgment on the first and fourth causes of action asserted in the complaint against Defendants is granted in its entirety; and it is further

ORDERED that the current directors of Bharati Center, Inc. are William Tripp Suczek, Pragnesh Surti, Frank Lenna, Gita Das, Tapas Kumar Mistri, Minal Patel, Mahua Purakait, and Dhruva Saha ("Current Directors"); and it is further

ORDERED that, as of July 18, 2017, Defendant David Britten (a/k/a Ramabhadra Das) is neither a director nor temple president of Bharati Center, Inc.; and that Defendants Heather Britten (a/k/a Satya Dasi), Arthur Cuffee (a/k/a Adideva Das), Alexis Cuffee, David Jones, Grigory Fooks, Hemwatee Singh, and Shaila Trivedi, are no longer directors or officers of Bharati Center, Inc.; and it is further

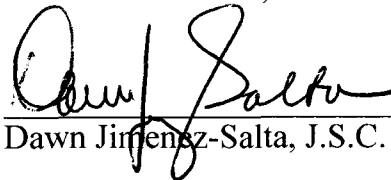
ORDERED Defendants are permanently enjoined from (a) holding themselves out as or acting as officers, directors, or representatives of Bharati Center, Inc., (b) interfering with the Current Directors' oversight and supervision of the operation of Bharati Center, Inc., (c) interfering with any congregant of Bharati Center, Inc. in attending services and/or worshiping at Bharati Center Inc.'s house of worship, (d) attempting to sell the real property of Bharati Center, Inc., (e) acting as a signatory on the accounts of Bharati Center, Inc., (f) and retaining any books or records pertaining to Bharati Center, Inc.

This constitutes the Decision/Order and Judgment of the Court.

Dated: October 29, 2018
Brooklyn, NY

Governing Body Commission of the International Society of Krishna Consciousness et al.
v. David Britten et al.
Index No. 524895/2017

E N T E R,



Dawn Jimenez-Salta, J.S.C.

Hon. Dawn Jimenez-Salta

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