

Bazan v Concepcion
2019 NY Slip Op 33980(U)
January 24, 2019
Supreme Court, Bronx County
Docket Number: 22367/12
Judge: John A. Barone
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IA-12

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Carlos Bazan, Janice Colley, Gilbert Santos, Michelle Santos and Larry Creer, derivatively on behalf of Crossway Christian Center, a New York religious corporation,

Plaintiff(s),

- against -

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Manuel Concepcion, Victor D. Rubianes, Maxwell Smith, and any other Trustees currently serving on the Board of Trustees, and Crossway Christian Center.

Defendant(s).

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HON. JOHN A. BARONE:

This is a motion by defendants seeking to dismiss the complaint herein pursuant to CPLR 3211(a)(3) and (7) and for sanctions pursuant to NYCRR 130.1. for legal fees, costs and sanctions. Plaintiffs oppose the motion and have filed an amended complaint pursuant to CPLR 3025(b).

The litigation has a long history. The Crossway Christian Center (Crossway) was founded in the 1970's and was affiliated with the District and General Council of the Assemblies of God. Originally the Church was named the Bronx Christian Center of the Assemblies of God. Rev. Mr. Mark T. Gregori was its pastor for approximately 34 years. In 2010, the General Council of the assemblies of God revoked his credentials. A resolution was passed by Crossway Board of Trustees *inter alia* placing Crossway under temporary District supervision with three representatives from the District named as the Trustees of Crossway and District Superintendent Durst acting as Chairman of the Board during which period Crossway's right of initiative and election were suspended. The previous Board was retained

as an Advisory Board. Thereafter, some members of the Crossway Congregation held a meeting which they deemed a business meeting which passed a resolution to amend the Crossway's Certificate of Incorporation. The amendment would permit Crossway to secede from the District and General Councils.

In February 2010, suit was brought by the predecessors to the plaintiffs in this suit seeking an injunction to compel respondents to execute and file an Amendment to the Certificate of Incorporation adopted at the Special Business Meeting of February 21, 2010.

Justice Patricia Williams of this court held hearings on the petition and ordered that a Special Business Meeting be held at Crossway on May 30, 2010 at which time the memberships of the church could vote on whether they wished to secede from the Assemblies of God denominations, but on June 21, 2010, Justice Williams ruled from the bench that the court had no jurisdiction in the matter. The Justice found that although petitioners had filed their order, they had never filed a summons and complaint or a petition and thus no action had been commenced. The case was then dismissed.

In June of 2011, petitioner brought a second cause of action seeking similar relief. Respondents moved to dismiss. The matter was heard by Justice Geoffrey Wright of this court who ruled for the respondents and dismissed the petition.

The petitioners appealed to the Appellate Division, First Department. The Appellate Division affirmed Justice Wright on the grounds that the respondents had no power to grant the relief requested by petitioners. The Court also stated that were they to consider petitioner's claims on the merits they would find that the initial intervention of the respondents was valid and permissible under the bylaws of Crossway.

In this most recent cause of action, plaintiff's are demanding that defendants be

compelled inter alia to approve the vote of February 21, 2010 to amend Crossway's Certificate of Incorporation; 2) to approve the May 30, 2010 vote to disaffiliate from fellowship with Assemblies of God; 3) that the Certificate of Reincorporation of March 11, 2012 be declared null and void; 4) that plaintiffs be recognized as in full membership; and, 5) that defendants return the use of the property of Crossway to plaintiffs and other members.

The defendant states that plaintiff's claims are barred by the doctrine of res judicata and collateral estoppel. Defendant denies the applicability of either doctrine to this case. Were defendants to prevail in either of its contentions, this would be dispositive of the entire case. Res judicata is defined mostly by case law. Doctrines related to it include not only collateral estoppel but doctrines such as "the law of the case", "direct estoppel", etc. As distinguished from collateral estoppel, res judicata essentially involves claim preclusion. It is applicable when a party is attempting to relitigate a cause of action. It applies not only to matters litigated but also to those that might have been litigated in the same action. Schuylkill Fuel Corp., v. B&C Nieberg Realty Corp., 250 NY 304. Siegel NY Practice (4th Edition) §442.

Collateral estoppel involves issue preclusion. The doctrine simply stated is that where a party has had a full opportunity to litigate an issue he cannot reasonably demand another chance to do so. Schwartz v. Public Administrator, 24 NY 2d 65.

Defendant makes the following points in arguing that plaintiff's action should be dismissed on the basis of res judicata and collateral estoppel. First of all, defendants state that in the previous cause of action related to this matter, similar issues were raised or could have been raised and are therefore barred by res judicata when those actions reached a final conclusion. Second, defendants contend that plaintiffs are collaterally estopped from relitigating the issues herein because they are identical with issues raised in previous complaints.

Plaintiffs respond that, as to the previous actions, the issues involved were not dismissed on the merits. Secondly, plaintiffs state that new issues are involved in this case. Finally, plaintiffs allege that there is no privity between the plaintiffs in this action and the plaintiffs in the previous actions.

In the opinion of the court the decision of Mr. Justice Wright on the action brought under Bronx Index number 260336/10 and the affirmance of that decision by the Appellate Division, First Department have concluded all litigation on this matter. The issue that underlies all of the litigation in these cases concerns the dismissal of Pastor Gregorio by the District Council of the Assemblies of God based on the resolution of the Board of Trustees of the Crossway dated February 21, 2010 which empowered the General Council and the District Council to take the actions described above. While the Appellate Division in its decision of December 20, 2012 affirmed Justice Wright's decision on the grounds of mootness, that court went further. This court reiterates the language of the Appellate Division:

"Were we to consider petitioner's claims on the merits we would find that, because the intervention of respondents into the affairs of Crossway was valid and allowed under its bylaws, respondents were not obligated to take the actions sought by petitioners."

In this court's opinion, that finding of validity precludes further litigation of these issues. The court is informed that Pastor Gregori has formed a new church and congregation including many of the protesting congregants of Crossway. This should have concluded all litigation herein.

Based on the determination, this court is of the opinion that there is no need to address the other grounds for dismissal raised in defendant's motion. The court further determines that this is not an appropriate matter to impose sanctions upon plaintiffs pursuant to 22 NYCRR 130-1.1.

As to plaintiff's cross-motion to amend the complaint, this Court believes that no amendment of the complaint will affect the issue of dismissal on the issues of res judicata and collateral estoppel.

Conclusion

- 1) Defendant's motion to dismiss the complaint pursuant to CPLR 3211 is granted.
- 2) Defendant's motion for legal fees costs and sanctions pursuant to 22 NYCRR 130-1.1 is denied.
- 3) Plaintiff's cross-motion to file an amended complaint pursuant to CPLR 3025(b) is denied.

This constitutes the decision and order of this Court.

Date: 1/24/14



John A. Barone, JSC