

Kneses Israel of Sea-Gate v Fetiman
2020 NY Slip Op 32440(U)
July 22, 2020
Supreme Court, Kings County
Docket Number: 516508/18
Judge: Kathy J. King
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At an IAS Term, Part 64 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 July, 2020.

P R E S E N T:

HON. KATHY J. KING,

Justice.

-----X
KNESES ISRAEL OF SEA-GATE, ET. AL.

Petitioners,

-against-

Index No. 516508/18

MOSHE FETTMAN, EL AL.

Respondents,

ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Statutory Notice Respondent.
-----X

The following e-filed papers read herein:

NYCEF Doc. Nos.

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	381-402	457-462, 463-480	495-505
Opposing Affidavits (Affirmations)	428, 429-439	482-484, 485-488	509-513, 515-521
Reply Affidavits (Affirmations)	440-450, 451, 508		531-540

Upon the foregoing papers, petitioner Kneses Israel of Sea-Gate ("Kneses"), et. al, move, in Mot. Seq. 17, for an order; seeking inter alia, (1) leave to amend the caption to include Joseph Wolhendler ("Wolhendler") as a Respondent; (2) leave to amend the petition pursuant to CPLR 3025; and (3) pursuant to CPLR 1003, granting leave to add Chabad of Sea Gate and Coney Island, Inc. a/k/a Chabad by the Sea a/k/a Chabad by the Ocean f/k/a Torah Fax, Inc. ("Chabad"), Chabad of Sea Gate Resource Center Incorporated ("Chabad-RCI"), and Rivka Brikman

("Rivka") as Respondents in this action and to serve said parties with a supplemental summons and amended petition. Respondent Rabbi Meier Brikman and his wife ("Brikman Respondents"), oppose the motion and Respondent congregant members oppose the motion.

The Brikman Respondents move, in Mot. Seq. 18, for an order; seeking inter alia, (1) pursuant to Judiciary Law § 19, to hold Respondent United Talmudical Academy of Boro Park ("UTA") in civil contempt; and (2) pursuant to Judiciary Law § 750 (A) (3-4), to hold UTA in criminal contempt. Respondent UTA opposes the motion.

The Brikman Respondents move, in Mot. Seq. 19, for an order: (1) removing Israel Goldberg, Esq. from any temporal control of Kneses; and (2) granting partial summary judgment in their favor on petitioner's third cause of action by determining that the July 1, 2018 lease between Kneses and UTA is invalid. Petitioners oppose the motion and Respondent UTA submits partial opposition.

Mot. Seq. No. 17. - Petitioners' Motion for Leave to File Amended Petition and Caption

A party may amend its pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of the court or by stipulation of the parties (*see* CPLR 3025 [b]; *Cullen v Torsiello*, 156 AD3d 680, 681 [2d Dept 2017]). "Leave shall be freely given upon such terms as may be just" (CPLR 3025 [b]; *see also Cullen*, 156 AD3d at 681). CPLR 1003 provides, that "parties may be added at any stage of the action by leave of court or by stipulation of all parties who have appeared, or once without leave of court within twenty days after service of the original summons or anytime before the period for responding to that summons expires or within twenty days after service of a pleading to it" (CPLR 1003).

Petitioners, in support of their motion, rely on bank records that were obtained in November 2018, and argue that leave of court is required to amend the petition to add a cause of

action arising from tax fraud. The Court agrees with Respondents, in opposition that the proposed amendment is unrelated to the underlying claim which involves in the validity of the election. Additionally, the Court finds that granting petitioners' motion would prejudice Respondents as it would further delay this case. The Court has considered the remainder of petitioners' arguments and find them to be without merit. Accordingly, the motion is denied in its entirety (Mot. Seq. 17).

Mot. Seq. No. 18. - Brikman Respondents' Motion for Contempt and Order of Protection

Pursuant to Judiciary Law § 753, “[a] court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 28-29 [2015], quoting Judiciary Law § 753 [A]). This statute applies, as relevant here, in the case of “[a] party to the action or special proceeding, an attorney, counselor, or other person . . . for any other disobedience to a lawful mandate of the court” (Judiciary Law § 753 [A] [3]; see *Campanella v Campanella*, 152 AD2d 190, 193-194 [2d Dept 1989]).

Here, there was a lawful court order in effect precluding UTA from using the Kneses synagogue. The affidavits in support of the motion for contempt show that the UTA students, contrary to the court order, entered the synagogue, vandalized the synagogue, and harassed the congregant members who were lawfully on the premises. Counsel for UTA argues that the students were not acting purposefully, but instead, indicated that the students displayed aberrant behavior and represented that such conduct will not happen again. While the Court agrees with the Brikman Respondents that the students' conduct was, in effect, contemptuous, the Court accepts UTA counsel's representation that there will not be a repeat of such acts. However,

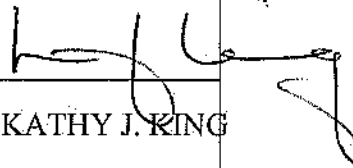
Counsel for UTA is put on notice that the Court will not countenance or tolerate such conduct going forward. Accordingly, the motion is denied in its entirety (Mot. Seq. 18).

Mot. Seq. No. 19. - Brikman Respondents' Motion to Declare the Special Election a Nullity and Enjoin Respondents from Taking any Actions Regarding Knescs' Temporal Affairs.

The requested relief is currently the subject of a framed issue hearing before JHO Miriam Sunshine. Therefore, the motion is denied (Mot. Seq. 19).

This constitutes the decision of the Court.

ENTER,



HON. KATHY J. KING

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JSC