

Kneses Israel of Sea-Gate v Fettman

2020 NY Slip Op 33848(U)

November 2, 2020

Supreme Court, Kings County

Docket Number: 516508/18

Judge: Kathy J. King

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This opinion is uncorrected and not selected for official publication.

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 2nd day of November, 2020.

PRESENT:
HON. KATHY J. KING,

Justice.

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KNESES ISRAEL OF SEA-GATE, by WAYNE BUTLER, and its members MARK SILBER and HENRY GRUNBAUM,

Petitioner,

-against-

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MOSHE FETTMAN, JEFF BEYLINSON, JOSEPH BEYLINSON, SHMUEL P. MARSOW, NATALYA PERMYAKOVA, LEVI PAVLOVSKY, JULIA SLAVIN AS PUTATIVE OFFICERS OF KNESES ISRAEL OF SEA-GATE, RABBI CHAIM BRIKMAN, and UNITED TALMUDICAL ACADEMY OF BORO PARK,

Mot. Seq. Nos. 20, 22, 23 & 24

Respondents,

ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Statutory Notice Respondent.

-----X
The following papers number 1 to 17 read herein:
Notice of Motion and Affidavits (Affirmations)
Annexed
Opposing Affidavits (Affirmations)
17

Papers Numbered
1-2, 2-4, 5-6, 7-8
9, 10, 11, 12, 13, 14, 15, 16,

The Court hereby consolidates the within motions for disposition as follows:

Motion Seq. No. 20

Petitioners' motion to remove Yisroel Schulman from decision making regarding temporal affairs is granted (Mot. Seq. No. 20). Consistent herewith, the Court also *sua sponte* amends its order dated July 23, 2020 *nunc pro tunc*, to also include the removal

of Israel Goldberg from decision making regarding temporal affairs of Kneses Israel of Seagate ("Kneses") (Mot. Seq. No.19).

Motion Seq. No. 22

Respondents' motion for judicial approval of Kneses' proposed lease of the property located at 3716 Surf Avenue, Brooklyn, NY is granted (Mot. Seq. No. 22). The order granting said approval is attached herein and incorporated by reference. Petitioner in its opposition papers indicate that there is no opposition to Kneses leasing its property to Seagate. However, petitioner contends that the movant fails to attach requisite information pursuant to New York Not for Profit Law ("N-PCL") § 511.

Religious Corporations Law § 12(1) provides that in order to sell any of its real property, a religious corporation must apply for, and obtain, leave of court pursuant to N-PCL § 511; (*see Congregation Nachlas Jacob Anshe Sfard of Jackson Hgts. v Schwarz*, 152 AD3d 647, 647 [2d Dept 2017]). N-PCL 511 (d) provides a two prong test which states "if it shall appear, to the satisfaction of the court, that the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interests of the members will be promoted, it may authorize the sale, lease, exchange or other disposition of all or substantially all the assets of the corporation, as described in the petition, for such consideration and upon such terms as the court may prescribe."

Contrary to petitioners' contentions, the Court finds that the petition, together with the documentary evidence submitted in support of the petition meet the requirements of N-PCL § 511, and that based on review thereof, the terms of the lease are fair and reasonable, and are in the best interests of Kneses.

The branch of respondents' motion seeking an order directing the Landlord/Tenant court to proceed with the eviction of United Talmudical Academy of Boro Park ("UTA") is denied without prejudice to renew (Mot. Seq. No.22).

By order dated September 25, 2019, this Court vacated a stay to reinstate the Landlord/Tenant action captioned *UTA of Boro Park v Congregation Kneses Israel of Sea-Gate* Index No. 80264/2017. The Landlord/Tenant court by order dated December 19, 2019 (J. Gerstein) denied the motion of respondents without prejudice to renew, citing this Court's June 5, 2019 order which directed respondents to withdraw duplicative relief pending in Civil Court. Specifically, J. Gerstein found that the counterclaims and cross-claims of Kneses in the Supreme Court action, e.g., "...to have the lease between UTA and Kneses declared invalid or rescinded," are issues which would have to be litigated in the holdover proceeding and may arguably render the relief sought in Civil Court duplicative of that sought in Supreme Court." Accordingly, Respondent now contends that in order to restore the Landlord/Tenant case, a further order of clarification is needed.

While the Appellate Division denied UTA's application to stay the enforcement of the September 25, 2019 order, in all other respects said order remains in effect, including that branch of the order vacating the stay of the framed issue hearing, which shall determine whether the July 9, 2018 meeting of Kneses was valid. In this regard, the findings of the JHO shall assist the Court in making a declaration regarding the claims, counterclaims and cross claims of the respective parties raised in the underlying proceeding, and may include enforcement of any previously obtained judgments in the Landlord/Tenant court. Accordingly, the motion is denied since the framed issue hearing is extant.

Mot. Seq. No. 23

Respondent Brickman's order to show cause to permanently enjoin UTA from utilizing the synagogue annex building is denied without prejudice to renew pending the findings of the framed issue hearing. The temporary restraining order also remains in effect pending the findings of the framed issue hearing (Mot. Seq. No. 23).

Mot. Seq. No. 24

Respondent UTA moves by order to show cause to; (1) allow UTA immediate and unrestricted access to the premises located at 3803 Nautilus Avenue and (2) vacate the de facto ex parte temporary restraining order of February 24, 2020 issued in connection with motion (Mot. Seq. No. 24).

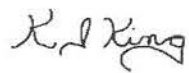
UTA's application for a preliminary injunction is denied in its entirety, since movant has failed to meet the criteria set forth in CPLR 6301. Significantly, UTA's right to possession of the premises located at 3803 Nautilus Avenue is based upon whether UTA has a valid leasehold interest, which is presently subject to the framed issue hearing. Movant has also failed to demonstrate how the balance of the equities favor educating young men against the public health risk of congregating at the synagogue and causing potential harm to the congregant members of Kneses. The Court notes that respondent Brikman, in opposition, cites Governor Cuomo's Executive Order 28 which indicates that Kneses is located in area of Brooklyn with a high level of COVID-19 infection. According to the Brooklyn cluster map, Kneses is in a "yellow cluster zone," wherein additional restrictions on gathering have been imposed by the Governor's order.

UTA also contends that the February 24, 2020 temporary restraining order should be vacated since this Court denied the underlying contempt motion upon which it was based. The Court disagrees. The criteria for establishing the respective remedies of contempt and injunctive relief are separate and distinct and are not legally interdependent. In the case at bar, the initial

TRO was granted on February 24, 2020. The TRO was extended on September 4, 2020 and pursuant to the within order is being extended pending the findings of the framed issue hearing.

Based on the foregoing, UTA's motion is denied in its entirety.

ENTER,



HON. KATHY J. KING
J.S.C

**HON. KATHY J. KING
JSC**

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