

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: IRA GAMMERMAN

PART 27 **LA Part 27**

0101678/2004

PAPPAS, NICHOLAS  
vs  
GREEK ORTHODOX ARCHDIOCESE

SEQ 1

DISMISS ACTION

INDEX NO. \_\_\_\_\_  
MOTION DATE 8/6/04  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *is decided in accordance with the accompanying memorandum decision.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 8/6/04

IRA GAMMERMAN *[Signature]*  
x.s.c.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 27

-----X  
NICHOLAS PAPPAS, et al.,

Plaintiffs,

-against-

Index No. 101678/04  
Part Cal. No. 18741

THE GREEK ORTHODOX ARCHDIOCESE OF  
NORTH AND SOUTH AMERICA a/k/a THE GREEK  
ORTHODOX ARCHDIOCESE OF AMERICAS and  
DEMETRIOS TRAKATELLIS, ARCHBISHOP OF  
AMERICA,

Defendants.

-----X  
**IRA GAMMERMAN, J.H.O.:**

Defendants The Greek Orthodox Archdiocese of North and South America and  
Demetrios Trakatellis move, pursuant to CPLR 3211, to dismiss the complaint in this action that  
seeks declaratory and injunctive relief.

The complaint names as defendants The Greek Orthodox Archdiocese of North and South  
America, also known as The Greek Orthodox Archdiocese of Americas (the Archdiocese) and  
Demetrios Trakatellis, Archbishop of America. The complaint was initially brought by thirty-  
four parishioners of various Greek Orthodox parishes of the Archdiocese throughout the United  
States. Three of the plaintiffs subsequently discontinued their claims, leaving thirty-one named  
plaintiffs remaining. Plaintiffs seek to compel the Archdiocese to govern itself pursuant to the  
1977 Charter of the Greek Orthodox Archdiocese of America rather than the more recently  
granted Charter of 2003.

The Greek Orthodox Church is a hierarchical church in which the ultimate control and

authority for all members within the church lies with the Holy Apostolic and Ecumenical Patriarchate of Constantinople (the Ecumenical Patriarchate). The Church shares a common bond and theology with other Orthodox churches, each of which is headed by a Patriarch or the equivalent, but all of which are essentially governed by the Ecumenical Patriarchate. Within the United States, the Archdiocese is the highest spiritual and governing authority of the Greek Orthodox Church for its approximately one million parishioners. The Archdiocese was incorporated in 1921 pursuant to Section 15 of the Religious Corporations Law (RCL) of the State of New York and is comprised of the Direct Archdiocesan District in New York and eight Metropolises or dioceses throughout the United States. The Archdiocese is governed by a Charter granted by the Ecumenical Patriarchate originally in 1922 and then amended in 1927, 1931, 1977 and 2003. The various amended Charters (collectively "The Charter") and, additionally, the Special Regulations and Uniform Parish Regulations, which are essentially the by-laws of a corporation, are administered by the Archbishop and the Holy Eparchial Synod which is comprised of the Archbishop and the bishops of each of the eight Metropolises. The Charter requires that an institution of the Archdiocese called the Clergy-Laity Congress convene every two or three years to decide on issues regarding the life, mission and unity of the Archdiocese with the exception of canonical and dogmatic matters. All decisions of the Clergy-Laity Congress are submitted to the Ecumenical Patriarchate for approval and ratification. When the Clergy-Laity Congress is not in session, the Archdiocesan Council can exercise the authority of the Congress when necessary.

The dispute between plaintiffs and the Archdiocese arises out of certain differences between the 1977 and the 2003 Charters. Essentially, plaintiffs allege that the 2003 Charter was

improperly adopted because the Clergy-Laity Congress requested that the Ecumenical Patriarchate grant the new Charter with certain modifications which were not included in the final Charter as granted on January 18, 2003. By this grant, the 2003 Charter superseded the earlier 1977 Charter. Further, plaintiffs allege that the Charter constitutes the by-laws of the corporation and, as such, the amended Charter of 2003 was improperly granted since there was a failure to serve notice as required by RCL § 5. The complaint seeks a judgment declaring that the 1977 Charter is the governing charter of the Archdiocese; and a mandatory injunction requiring defendants to govern the Archdiocese in accordance with the 1977 Charter.

The 2003 Charter differs from the 1977 Charter in the following manner: (1) elevating the Bishops of the Archdiocese to Metropolitans, although their duties and rights remain largely unchanged; (2) changing the name of the Synod of Bishops to the Holy Eparchial Synod; (3) specifying additional eligibility criteria for future candidates for the office of Archbishop or Metropolitan; (4) modifying procedures for handling a vacancy in the position of Archbishop or Metropolitan; (5) specifying more detailed procedures by which the Spiritual Courts function; (6) granting authority to the Eparchial Synod to determine, in consultation with the Archdiocesan Council, the number, seat and boundaries of the Metropolises within the Archdiocese, subject to the approval of the Ecumenical Patriarchate; (7) providing for oversight of monasteries; and (8) providing a more detailed process for amending the Charter.

Defendants move to dismiss the complaint on the grounds that plaintiffs lack standing to bring the action; that the action is barred by the First Amendment of the United States Constitution; and that defendant Archbishop Trakatellis is not a proper defendant.

Notice Under RCL § 5

Plaintiffs allege that the Charter at issue here constitutes the by-laws of the corporation.

As such, they allege that pursuant to RCL § 5, notice is required. The section provides, in pertinent part:

By-laws may be adopted or amended, by a two-thirds vote of the qualified voters present and voting at the meeting for incorporation or at any subsequent meeting, after written notice, embodying such by-laws or amendment, has been openly given at a previous meeting and also in the notices of the meeting at which such proposed by-laws or amendment is to be acted upon.

Plaintiffs assert that the qualified voters in this instance would be delegates of the 36<sup>th</sup> Clergy-Laity Congress of which eleven plaintiffs are members, and that no such notice was issued.

Defendants dispute plaintiffs' characterization of the Charter as by-laws. Defendants assert that historically, the Charters of the Archdiocese, including the 1977 Charter, were granted by the Ecumenical Patriarchate, without notice to, or approval of, any "members" as defined by the plaintiffs. According to the affidavit of Jerry Dimitriou, Executive Director of Administration for the Archdiocese, by its own terms the 1977 Charter was modified without notice by the Ecumenical Patriarchate prior to being granted. Defendants point out that the 1922 Charter states that it is a constitution, in that its title "Katastatikon" is Greek for "constitution." The 1927 Charter was similarly titled. The later Charters were entitled "Syntagma," another Greek word for "constitution."

Defendants maintain that the governance document that was adopted by the Archdiocese is the Special Regulations and Uniform Parish Regulations (the UPR), as specifically stated in

the 1977 Charter: “Regulations as required to implement this charter and govern the Archdiocese shall be proposed by the Archbishop and presented to the Archdiocesan Council which shall consider, adopt, and present them to the next Archdiocesan Clergy-Laity Congress for approval,” (1977 Charter, Art. XXI). Further, a court has previously interpreted the UPR as the by-laws of the Archdiocese, Dimas v Greek Orthodox Archdiocese of America, NYLJ, June 17, 1999 (Sup Ct, NY County). I find, therefore, that the Charter of the Archdiocese represents the constitution of the corporation, not its by-laws. Accordingly, notice was not required.

### Standing

Only the members of a not-for-profit corporation can bring an action to compel performance of the corporation's by-laws, Thornton v The American Kennel Club, Inc., 182 AD2d 358 (1st Dept 1992). Defendants maintain that plaintiffs, while members in good standing of various parishes of the Archdiocese, are not members of the Archdiocese itself which is an ecclesiastical jurisdiction, not a parish church. Under New York’s Not-for-Profit Corporation Law (NFPCL) Section 601(c) membership in a corporation is evidenced, inter alia, by any such method as prescribed in the certificate of incorporation or by-laws which specifically addresses membership in the corporation. While nothing in the Archdiocese’s certificate of incorporation or by-laws addresses membership in the corporation, the by-laws do include a definition of membership in a parish (Chap II, Art.V, UCR). In Dimas v Greek Orthodox Archdiocese of America supra, the court stated:

(I)f a parish member is not a member of the Archdiocese, then who is?...In the absence of any provision in the by-laws which distinguish between membership in a parish and membership in the Archdiocese, the court must conclude that the two are one and the same.

Further, in Greek Orthodox Archdiocese of North and South America, Inc. v Greek Orthodox American Leaders Inc., 1998 WL 832707 (SD NY 1998) the court noted that the Archdiocese maintains a confidential list of thousand of names and addresses generated primarily from information supplied by parishes throughout the United States. The court rejected the Archdiocese's distinction between "spiritual" and "legal" members as "splitting hairs and engaging in semantics" and held that the Archdiocese had members for the purposes of NFPCL §621(b). Plaintiffs assert that, in light of Dimas, supra, defendants are collaterally estopped from asserting that parishioners are not members of the Archdiocese. However, collateral estoppel does not apply against a party that has prevailed in the previous litigation on other issues and has no incentive to appeal. In Staatsburg Water Co. v Staatsburg Fire District, 72 NY2d 147 (1988), the court held that it would be "fundamentally unfair to give preclusive effect to a determination when the only incentive for one party to have litigated stemmed from the litigation's potential collateral estoppel effect." In Dimas, supra, notwithstanding the finding that the members had standing, the Archdiocese prevailed in the litigation and had no reason to appeal. While collateral estoppel does not apply here, "religious corporations are designed for members, and courts have found that the Archdiocese does have members," Pappas v. Demetrios, Judgment and Order (Sup Ct, NY County Mar. 1, 2001) Index No. 114648/00, affd on reh'g, (Sup Ct, NY County 2001), affd, 293 AD2d 427 (1<sup>st</sup> Dept. 2002), leave to appeal granted in part and dismissed in part, 99 NY2d 644 (2003). Therefore, plaintiffs are members of the Archdiocese and have standing to bring this action.

#### First Amendment

The First Amendment to the United States Constitution precludes courts from intervening

in ecclesiastical matters, such as church governance, to resolve disputes involving religious organizations. As Justice Brennan, concurring, stated in Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v Amos, 483 US 327 (1987):

Religious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to “select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions. Religion includes important communal elements for most believers. They exercise their religion through religious organizations, and these organizations must be protected by the [Free Exercise][C]lause.”

(quoting Laylock, Towards a General Theory of the Religion Clause: The Case of Church Labor Relations and the Right to Church Autonomy, 81 Colum L Rev 1373 [1981]).

In a case squarely on point, Serbian Eastern Orthodox Diocese for the U.S.A. v Milivojevic, 426 US 696 (1976), the Holy Assembly of the Serbian Orthodox Church (the Mother Church) reorganized one Diocese (the American-Canadian Diocese) into three Dioceses and removed and defrocked a bishop of the church who refused to recognize the reorganization. The Illinois Supreme Court ruled that the bishop’s removal was arbitrary under the church’s constitution and that the diocesan reorganization was beyond the scope of the Mother Church’s authority to effectuate such changes without diocesan approval. The United States Supreme Court reversed the decision, stating:

The fallacy to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes. Consistently with the First and Fourteenth Amendments “civil courts do not inquire whether the relevant (hierarchical) church governing body has power under religious law (to decide such disputes). . . . Such a determination . . . frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power



(within a hierarchical) church so as to decide . . . religious law (governing church polity) . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine.”

(quoting Md. & Va. Churches v Sharpsburg Church, 396 US 367 [1970] [Brennan, J., concurring]). The Supreme Court ruled that the Illinois Supreme Court incorrectly substituted its interpretation of the church constitution for that of the church’s highest ecclesiastical tribunals, stating:

We will not delve into the various church constitutional provisions relevant to this conclusion for that would repeat the error of the Illinois Supreme Court. It suffices to note that the reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs.

In the present case, the Holy Synod of the Ecumenical Patriarchate determined that it has the power to grant the 2003 Charter without approving certain amendments. The power to decide ecclesiastical matters not explicitly stated in the Charter or regulations is expressly reserved to the Ecumenical Patriarchate, which is the supreme governing authority of the Greek Orthodox Church (1977 Charter Art. I). The substance of the Charter modifications here certainly appear to be core ecclesiastical matters. Pursuant to Milivojevich, *supra*, the courts simply do not have the authority to interfere with the manner in which churches organize the titles of their clerics, to determine the eligibility criteria for candidates for Archbishop or bishop, to oversee monasteries, or to inject the state judicial authority into the other matters raised by this action.

Plaintiffs attempt to distinguish Milivojevich by alleging that the Greek Orthodox Church is not a hierarchical church, since it is not one of the churches listed in Section 12 of the RCL. However, this section simply addresses the manner in which trustees of a religious corporation

may sell, mortgage or lease real property owned by the corporation, and specifies by name many, but not all, hierarchical churches. Further, the Archdiocese was incorporated pursuant to Section 15 of the RCL which applies to hierarchical churches. RCL § 15(3) states in pertinent part, that "[t]he trustees. . . shall consist of the ecclesiastical administrative heads, also known as the hierarchs . . ." This section also covers the Russian and Serbian Orthodox Churches, which have been determined as hierarchical by the United States Supreme Court, see Milivojevich, supra; Kedroff v St. Nicholas Cathedral, 344 US 94 (1952). I do not think it can seriously be disputed that the Greek Orthodox Church is hierarchical.

Plaintiffs rely on First Presbyterian Church of Schenectady v United Presbyterian Church in the United States, 62 NY2d 110 (1984) as the controlling authority in this action. That case involved the neutral principles of law doctrine under which a court can review secular documents such as deeds or by-laws and relevant state statutes when resolving a church property dispute. Plaintiffs contend that First Presbyterian Church, while adjudicating a property dispute between an individual parish church and its denominational church organization, did not specifically limit its applicability to property issues. However, there was nothing before the court except the issue of ownership of the church property. The court determined it could resolve this issue without intruding into matters involving church doctrine. Moreover, the cases cited by plaintiffs all involve matters which clearly do not involve ecclesiastical issues, such as defamation and breach of contract. Plaintiffs further assert that the doctrine can be applied in situations involving both civil rights as well as property rights, citing Mays v Burrell, 124 AD2d 714 (2d Dept 1986). However, this action does not involve any alleged civil rights issues. Rather, it indisputably involves church governance matters in which Milivojevich, supra, prohibits court interference.

Archbishop Demetrios

Plaintiff has separately sued Archbishop Demetrios, seeking an injunction compelling him individually to administer the Archdiocese in accordance with the 1977 Charter and not the 2003 Charter. However, plaintiffs have alleged no actual or threatened misconduct by the Archbishop that would make him a proper party under NFPCL § 720 nor are they seeking any specific relief that the Archbishop but not the Archdiocese could provide. The only basis for maintaining the action against the Archbishop is that he is responsible for implementing the Charter, as granted to the Archdiocese.

Accordingly, it is

ORDERED that the motion to dismiss is granted and the complaint is dismissed; and it is further

ORDERED that upon presentation of the requisite papers, the Clerk is directed to enter judgment accordingly, with costs and disbursements to be taxed by the Clerk.

Dated: 8/6/04

ENTER:

                      **IRA GAMBERMAN**  
J.H.O.