

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 360 Adams Street, Brooklyn, New York, on April 17, 2018.

P R E S E N T:

HON. DAWN JIMENEZ-SALTA,

Justice.

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In the Matter of the Application of

BHARATI CENTER INC.

Index No.: 2855/2017

For Approval to Sell Real Property Pursuant to Sections 510 and 511 of the Not-for Profit Corporation Law and Article 2, Section 12 of the Religious Corporations Law

DECISION AND ORDER

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

- 1) Petitioner Bharati Center Inc.'s ("Petitioner") Verified Petition seeking approval of the sale of the real property located at 295-309 Schermerhorn Street, Brooklyn, New York 11217, dated October 23, 2017;
- 2) Petitioner's Order to Show Cause, dated October 23, 2017;
- 3) Respondent Governing Body Commission of the International Society for Krishna Consciousness' ("Respondent GBC") Answer to Petition with Objections, dated December 15, 2017;
- 4) Respondent-Board of Directors William Tripp Suczek, Pragnesh Surti, Frank Lenna, Gita Das, Tapas Kumar Mistri, Minal Patel, Mahua Parakait, and Dhruba Saha's ("Respondent Board") Answer and Objections to Petition with Request for Evidentiary Hearing, dated December 29, 2017;
- 5) Intervener-Members Mina Patel, Celine Assouline, Rina D. Surti, Chris Ostrowski, Pragnesh Surti, Augustine Reyes, Lewis Einhorn, and Jay Elliot Israel a/k/a Jayadvita Swami's ("Intervener-Members") Affirmation in Opposition, dated January 3, 2018;
- 6) Affidavit of Objection on Behalf of the Attorney General, dated January 4, 2018;
- 7) Respondent Board's Amended Answer and Objections to Petition with Request for Evidentiary Hearing, dated January 5, 2018; and
- 8) Bharati Center's Response to Objections with Affidavit of David Britten, dated January 24, 2018, all of which submitted January 31, 2018.

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Papers

Numbered

Verified Petition and Order to Show Cause with Affidavits/Affirmations.....	Petitioner 1 [Exh. A-W], 2
Answering Affidavits.....	Respondent GBC 3 [Exh. A-C] Respondent Board 4 [Exh. A] Intervener-Members 5 [Exh. A-E] Attorney General 6 Respondent Board 7
Affirmation in Reply.....	Petitioner 8 [Exh. A-J]
Other [Memoranda of Law].....	

Upon the foregoing cited papers, the Decision/Order is as follows: Bharati Center's Verified Petition seeking approval of the proposed sale of the real property located at 295-309 Schermerhorn Street, Brooklyn, New York 11217 pursuant to Religious Corporations Law § 12 and Not-for-Profit Corporation Law §§ 510 and 511 is dismissed [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Although the GBC filed an additional affidavit, dated January 29, 2018, submitted in response to statements contained in Petitioner's response to respondents' objections, the Court will not consider the affidavit because it constituted an improper surreply filed after the deadline established in the parties' briefing schedule and without leave of the Court [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

BACKGROUND

This action arises out of a property dispute between members of the ISKCON Radha Govinda Temple, incorporated as Bharati Center Inc. ("Bharati Center" or "Petitioner"), and its denominational church organization, the Governing Body Commission ("GBC") of the International Society for Krishna Consciousness ("ISKCON"), regarding the ownership, control, and proposed sale of a Hare Krishna temple located at 295-309 Schermerhorn Street in Brooklyn, New York ("Brooklyn Temple") [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

On October 23, 2017, Petitioner, Bharati Center, a religious corporation, filed this petition ("Petition") pursuant to Religious Corporations Law § 12 ("RCL") and Not-for-Profit Corporation Law §§ 510 and 511 ("N-PCL") seeking the Court's approval of the sale of the Brooklyn Temple to nonparty EF Equities LLC for \$58,800,000. ISKCON under the administration of the GBC opposes the sale [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The issue before the Court is whether, based on the governing documents and other documentary evidence, the Petitioner holds its real property in an express or implied trust for the benefit of ISKCON such that the sale of the Brooklyn Temple may not proceed as contemplated in the Petition without the approval of ISKCON or its representatives [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C;

Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-JJ.

The Court must also determine whether the proposed sale as detailed in the Petition satisfies the two prongs of N-PCL § 511(d) requiring, first, that the terms of the transaction are fair and reasonable and, second, that the transaction promotes “the purposes of the corporation” and interest of its members (*see* N-PCL § 511(d)) [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-JJ].

History and Establishment of ISKCON and the GBC¹

The International Society for Krishna Consciousness is a hierarchical religious denomination founded by A.C. Bhaktivedanta Swami Prabhupada (“Prabhupada”) in 1966. Adherents follow the teachings of Krishna Consciousness, a set of religious beliefs under “the broad theological umbrella of the Vaishnava tradition of Bhakti Hinduism, formalized in the ninth century in Southern India” (*International Soc. for Krishna Consciousness v Barber*, 650 F2d 430, 433 [2d Cir 1981]). Though established in New York, ISKCON has expanded into a global movement with temples around the world [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-JJ].

The highest level of organization and governance of ISKCON is called the Governing Body Commission, which was established by Prabhupada in a document entitled “Direction of Management,” dated July 28, 1970. Prabhupada created the GBC to manage ISKCON following his death. Prior to the establishment of the GBC, he supervised each temple individually and communicated directly with temple leaders on spiritual and administrative matters. In “Direction of Management,” the GBC was charged with the operation and management of ISKCON as an institution, including organizing the opening of new temples, maintaining established temples, and providing “advice . . . in cases of real property purchases.” The GBC was also given final decision-making authority with respect to religious doctrine [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-JJ].

In addition, Article 8 of “Direction of Management” provides that the GBC possesses the authority to remove a temple president “with the support of local [t]emple members,” though the removal procedure is not described. Each temple president, responsible for activities at the local level, is accountable to a GBC representative. The GBC meets annually in Mayapur, India [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-JJ].

Prabhupada passed away in 1977, leaving behind a Will that further outlined his plans for the management and hierarchical structure of ISKCON. The first page of Prabhupada’s Will, in pertinent part, reads:

¹The facts presented herein are drawn from documents submitted by the parties and relevant findings made by Justice Randy Sue Marber in *Kelley, The International Society for Krishna Consciousness, Inc. and the Governing Body Commission of the International Society for Krishna Consciousness v Garuda*, a Supreme Court, Nassau County case involving a property dispute between a local congregation and ISKCON over the ownership of a Hare Krishna temple located in Freeport, New York (*see Kelley v Garuda*, 57 Misc 3d 1212(A), 2017 NY Slip Op 51393[U] [Sup Ct, Nassau County 2017]).

“The Governing Body Commission (GBC) will be the ultimate managing authority of the entire International Society for Krishna Consciousness. Each temple will be an ISKCON property and will be managed by three executive directors . . .” [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

After setting forth the names of directors to manage each temple, Prabhupada indicated that, upon the death of a director, a new director may be appointed “provided the new director is [Prabhupada’s] initiated disciple following strictly all the rules and regulations of the International Society for Krishna Consciousness as detailed in [his] books . . .” [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Regarding the management of real property, Article 5 of the Will states:

“Properties outside of India in principle should never be mortgaged, borrowed against, sold, transferred or in any way encumbered, disposed of, or alienated, but if the need arises, they may be mortgaged, borrowed against sold, etc., with the consent of the GBC committee members associated with the particular property” [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The purpose of the Will was to ensure that the GBC “was and would remain the ultimate managing authority for ISKCON and its member temples” (*Kelley v Garuda*, 2017 Slip Op at *5).

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 incorporation with the Nassau County Clerk’s Office in August 1982. According to its certificate of incorporation, the purpose of Bharati Center is “the maintenance of places of worship and religious personnel in the State of New York.” Bharati Center’s bylaws were initially adopted in the same year [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

On September 2, 1982, Bharati Center filed a certificate of amendment of the certificate of incorporation changing its name and principal location to 295-309 Schermerhorn Street, Brooklyn, New York 11217. The purpose of the religious corporation and procedure for approvals and consents was unchanged [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The operative bylaws (“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. Article II states that Bharati Center’s purpose is to “perpetually and

regularly maintain” service of the faith and the Deity² “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” [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Pursuant to Article III, the GBC may establish ecclesiastical policy guidelines to be followed by all temples associated with ISKCON worldwide. Article III further 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 Deity worship, where the Bylaws state that the rituals for the worship of the Deity must follow the standards of Prabhupada and ISKCON [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Bharati Center’s Bylaws also address the procedures for voting and corporate governance. Article V, Section 1 provides that the Board of Directors must consist of between five and nine directors. The directors serve three-year terms with no limitation on the number of terms that can be served. The enumerated powers 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” as explained by Prabhupada 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 the corporation [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Article V, Section 5 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 [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

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 (or relocation of the Deity [sic]).” Should the GBC or its subcommittee advise against the proposed sale or relocation, the Board is required to reconsider the resolution at its next meeting. If any director votes against the proposed transaction, it is considered null and void. There is no provision prohibiting the GBC from withdrawing its consent once given [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

²The Deity refers to a sacred, consecrated icon typically made of stone, such as granite or marble, located in each Hare Krishna temple. In the Hindu theological tradition to which the Hare Krishna faith belongs, such images may be ritually worshiped as an embodiment of divinity. They are generally considered nonmovable and permanent unless exceptional circumstances are present [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

ISKCON Law Book

The ISKCON Law Book is a body of canon law drafted by the GBC consisting of rules and regulations for internal discipline and government of ISKCON. At its annual meeting, the GBC passes resolutions which are thereafter periodically codified as ISKCON law.³ 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” (*Kelley v Garuda*, at *7; see also Brian Bloch, *Creating a Faith Based Conflict Management System*, 14 Harv Negot L Rev 249, Winter 2009 (discussing a mediation program established for faith-based disputes within ISKCON and the role of the ISKCON Law Book in such proceedings)) [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Section 5.5 of the ISKCON Law Book details the procedure for initiating disciplinary action against temple presidents, 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 (including Deity worship), 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) [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Ordinarily, a leader subject to discipline will be placed on probation and thereafter given a period of at least one year to rectify the situation leading to his or her censure. If the leader does not take steps to remedy the violation, he or she may be suspended while the GBC determines whether to reinstate, remove, or relocate the leader. If the leader does not rectify the situation, then the GBC may act to remove the leader or impose other sanctions deemed appropriate. The GBC is empowered to remove an ISKCON leader immediately in cases of severe spiritual or moral deviation, rebellion against the authority of Prabhupada and the GBC, or where there is conduct that endangers ISKCON’s stability or security [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

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 GBC or its representatives. This is reiterated in Section 11.2.4, which provides that “no property in which the Deity of the Lord is installed can be sold without approval of the GBC Body.” The GBC is also specifically vested with veto power over any proposed sale, mortgage, transfer, encumbrance

³The resolutions passed at the annual GBC meetings are publicly available online through a link from the ISKCON homepage under “Resources” (<http://gbc.iskcon.org/gbc-resolutions/>). Neither party disputes the authority of the GBC to enact said resolutions, though Petitioner asserts that they are not legally binding with respect to matters of corporate governance of Bharati Center. Petitioner does, however, cite the resolutions as evidence of the GBC’s approval of the sale in 2008 [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

or lease in Section 10.4.4 [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The Brooklyn Temple

Bharati Center purchased the Brooklyn Temple on October 29, 1982 to serve as its principal location and place of worship. The seller, Congregation Mount Sinai, issued a purchase money mortgage in the amount of \$175,000 to Bharati Center, which was discharged on June 24, 2014. The purchase was funded through prior transactions involving the real property of ISKCON. The named purchaser on the deed is “Bharati Center Inc.” [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Bharati Center conducts seven altar worship and prayer services each day. There are also two weekly public assembly events at which there is prayer and altar worship, lectures based on scriptural readings, and a communal meal distributed to visitors free of charge. In addition to regular services, Bharati Center celebrates ten special festivals per year on religious holidays. Bharati Center also operates a licensed soup kitchen and temple gift store on the premises [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Facts and Procedural Background

Bharati Center is currently embroiled in a dispute between two factions over the ownership and control of the Brooklyn Temple. One group is comprised of David Britten (“Britten”), President of Bharati Center, and the Bharati Center Board of Directors consisting of Heather Britten, Arthur Cuffee, Grigory Fooks, David Jones, Hemwatee Singh, and Shaila Trivedi (“Original Board”). It was this group who authorized the sale of the Brooklyn Temple in August 2016 after a meeting of the Board of Directors which, by unanimous vote, recommended the sale of the property to EF Equities LLC (“EF Equities”), a Delaware limited liability corporation, for \$58,800,000. Following the annual corporate meeting, the recommendation was ratified in a Board resolution, dated August 18, 2016 [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The second group, consisting of the GBC and ISKCON, opposes the sale. A rival Board of Directors elected in 2017 with the support of the GBC also objects to the sale. Each side contests the legitimacy of the other side’s election and claims to be the rightful representatives of Bharati Center [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Bharati Center purportedly received authorization from the GBC to sell the Brooklyn Temple in 1998 and then again in March 2008. A certified copy of the GBC resolution authorizing the sale is attached to the Petition. The resolution states that the GBC authorizes Bharati Center to sell the Brooklyn Temple and relocate to an unspecified location in Queens or in “close outlying peripheral areas of New York.” It also notes

that the relocation may require that the Deity of the Brooklyn Temple be shifted to a temporary location while a new place of worship is established. There is a further provision directing that the proceeds of the sale should be used to purchase another location for the congregation to carry on its religious activities [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Thereafter, Bharati Center began looking for potential buyers. In April 2014, the Brooklyn Temple was listed for sale for \$60,000,000. Britten and the Original Board were purportedly unable to locate a buyer until April 2015, when EF Equities offered to purchase the Brooklyn Temple for \$54,000,000. Thereafter, the parties entered into an Agreement of Sale, dated August 20, 2015, wherein Bharati Center agreed to sell the Brooklyn Temple to EF Equities for \$54,000,000. Four subsequent amendments to the original Agreement of Sale followed. The Second Amendment, dated August 20, 2015, provided for the purchase of an option for the proposed future location of Bharati Center at 39-02 Queens Boulevard, Queens, New York 11104. It also increased the purchase price from \$54,000,000 to \$58,800,000 [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

For unspecified reasons in August 2016, Bharati Center reconsidered its decision to relocate to the Queens property and executed a Third Amendment revoking the Second Amendment. Bharati Center also agreed to reimburse EF Equities in the amount of \$56,576.85 for its expenses in obtaining the option. No alternative sites are discussed in the subsequent amendments [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

It was during this time that Britten informed the GBC of the proposed sale of the Brooklyn Temple to EF Equities [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

On January 4, 2017, the GBC notified Britten and the Original Board of its disapproval of the sale. The GBC also issued a resolution in which the Original Board was directed to discontinue its efforts to sell the Brooklyn Temple. In the same resolution, 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 the annual GBC meeting the following month, the Committee advised against the sale. A special meeting at which members of Bharati Center were invited to share their concerns was also scheduled to be held in Brooklyn. Neither Britten nor the remainder of the Original Board attended [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Shortly thereafter, on March 19, 2017, Britten and the Original Board called a special corporate meeting pursuant to Article IX, Section 7(B) of the Bharati Center Bylaws, where a vote of reconsideration was held to override the GBC's decision. The Original Board again unanimously voted to approve the sale [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

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 temple president and director 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 banned individuals opposed to the sale from worship at the Brooklyn Temple [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Britten's removal was subsequently reaffirmed by the GBC in two resolutions adopted on October 9, 2017 and November 4, 2017. In the November 2017 resolution, the Committee unanimously voted to remove the remaining directors of the Original Board who voted in support of the sale. Six new directors were appointed in their place ("2017 Board") [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

In June 2017, Bharati Center petitioned the Office of the Attorney General ("OAG") for approval of the sale as required by RCL § 12 and N-PCL § 511 prior to the commencement of this action. In opposition to the petition, the GBC advanced a number of objections, arguing that the GBC body did not approve the sale and that it had previously removed the Original Board. The GBC also challenged the sale on the ground that it did not promote the interests of Bharati Center and its congregants. It was noted that no concrete plans for the temporary or permanent relocation of the congregation had been provided [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

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 [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The GBC passed a final resolution on October 9, 2017 reaffirming the removal notice of July 2017. The resolution also prohibited Britten and members of the Original Board from having any involvement in the management and operation of Bharati Center. The GBC further directed Britten to revoke any alleged bans preventing individuals opposed to the sale from worshipping at the Brooklyn Temple [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The Petition and Relief Sought

Bharati Center, under the administration of Britten and the Original Board, commenced this action on October 23, 2017 by the filing of the Petition pursuant to N-PCL §§ 510 and 511 and RCL § 12 [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

In the Petition, Bharati Center claims that the proposed conveyance of the Brooklyn Temple was authorized by the requisite governing bodies. Petitioner argues that the Original Board, as rightful representatives of Bharati Center, authorized the sale by unanimous vote of the Board of Directors on August 8, 2016. It asserts that said approval satisfies the statutory requirement of a vote of at least two-thirds of the members of the Board (*see* N-PCL § 510(a)(1)), as well Article IX of its Bylaws (reflecting the same requirement). In accordance with N-PCL § 511(a)(8) (which requires a schedule annexed to the petition setting forth the consent of the voting members of the corporation), Bharati Center attaches as exhibits copies of the resolution and minutes of the meeting in which it was adopted [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Petitioner acknowledges that Article IX, Section 7 of the Bharati Center Bylaws requires the approval of the GBC for transactions involving real property, but argues that it previously obtained the GBC's consent as recorded in the March 2008 resolution. Following the GBC's alleged reversal of approval, Bharati Center called a special meeting in accordance with Article IX, Section 7(B) at which the Original Board unanimously voted to overturn the GBC's decision. As a result, Bharati Center asserts that all of the conditions for sale of the Brooklyn Temple required by the Bylaws were satisfied [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Addressing the statutory requirements of N-PCL § 511, Bharati Center asserts that the sale is in the best interest of Bharati Center and the congregation. The Brooklyn Temple was constructed in the 1920's and it is alleged that substantial maintenance will be required in order for the building to remain habitable. Petitioner estimates that more than \$12,000,000 of repairs and maintenance will be necessary over the next three years. The written report attached to the Petition detailing the scope of work includes substantial electrical and plumbing work, HVAC maintenance, roof repair, and restoration of the front facade. Bharati Center's profit and loss statement for the past three years allegedly demonstrates that it will not have sufficient revenue to cover these expenses. In support of this contention, Petitioner proffers schedules of Bharati Center's assets, liability, income, and expenses from 2014 to 2016 [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The Petition further asserts that the relocation of Bharati Center will better serve its congregants because the current location in Downtown Brooklyn is far removed from their residences. The congregation also allegedly faces hardship from the lack of qualified priests in the vicinity of the Brooklyn Temple. These difficulties have allegedly worsened in recent years due to the rising costs of residential property in Downtown Brooklyn. Petitioner claims that in order to secure the long-term viability of the congregation, it is necessary

for the temple to be relocated in closer proximity to its base [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Petitioner represents that the proceeds from the transaction will be used to relocate the congregation to an area in which its priests and devotees reside. For these reasons, Petitioner argues the sale is in the best interest of the Bharati Center and its congregants [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Bharati Center alleges that it has investigated suitable temporary or permanent sites for relocation, but provides no concrete details in the Petition. Petitioner anticipates that it will take two to three years to acquire or construct a new permanent location. Bharati Center intends to place the proceeds in a separate interest bearing escrow account while a new place of worship is located [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The GBC filed its answer with objections on December 29, 2017. In the answer, the GBC states that ISKCON is vigorously opposed to the proposed sale to EF Equities. The GBC's position is that ISKCON is a hierarchical organization with the GBC as its ultimate authority; therefore, Bharati Center is required to abide by the GBC's decisions regarding any planned sale or transaction involving real property. In support, the GBC cites Prabhupada's Will and writings, the governing documents of Bharati Center, and ISKCON laws, which purportedly evidence ISKCON's hierarchical nature and authority over local temples. The GBC argues that Article III, Section 1 (stating that the GBC carries out the directives of Prabhupada and establishes guidelines and policy for all of ISKCON) and Article IX, Section 7 (requiring that the Board of Directors seek approval from ISKCON for real property transactions) of the Bylaws further demonstrate that the proposed sale cannot proceed without the GBC's consent [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The GBC also discusses *Kelley v Garuda*, a recent Nassau County Supreme Court case involving a property dispute between ISKCON and a Hare Krishna temple in Freeport, New York that arose when the local temple attempted to disaffiliate itself from ISKCON. ISKCON and the GBC commenced the action seeking, *inter alia*, a declaration that the local temple property belonged to ISKCON (*Kelley v Garuda*, 2017 NY Slip Op at *4). Applying the neutral principles of law approach, the court held that the temple property in dispute was held by the local temple in trust for ISKCON (*Id.* at *15). In reaching this conclusion, Justice Randy Sue Marber conducted an extensive analysis of the history of ISKCON, its hierarchical nature, and the governing documents of the local temple and ISKCON. The GBC argues that the findings of Justice Marber are instructive and that this case is susceptible to a similar analysis by application of neutral principles of law. According to the GBC, the evidence discussed in *Kelley* unequivocally demonstrates that ownership and control of local Hare Krishna temples lies with ISKCON [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The GBC also objects to the sale on the ground that the Original Board does not have the authority to act on behalf of the corporation because its members were previously removed by the Committee in November

2017. Upon learning of the proposed sale to EF Equities,⁴ the GBC asserts that it promptly informed Britten on at least three separate occasions (in resolutions from the 2016 annual meeting, 2016 midterm meeting, and 2017 annual meeting) that it did not approve of the transaction. Nevertheless, Britten and the Original Board continued with their plans to sell the Brooklyn Temple and, after holding a vote of reconsideration in March 2017, again approved the sale. It is also alleged that Britten abused his authority as temple president by barring certain congregants who opposed the sale from attending services. In addition, Britten allegedly took steps to disaffiliate Bharati Center from ISKCON by declaring that it was legally and financially independent and by eliminating all reference to ISKCON affiliation from temple signage, websites, publications, and donation forms [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

As a result, in accordance with the procedures outlined in the ISKCON laws, the GBC removed Britten from his position as temple president and director. After the remaining members of the Original Board continued working with Britten to sell the Brooklyn Temple, the Committee removed them as well. Accordingly, the GBC argues that Britten and the Original Board had no authority to act on behalf of Bharati Center with respect to the sale [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The GBC also argues that the proposed sale does not promote the purposes of the religious corporation and is not in the best interest of Bharati Center and its congregants (*see* N-PCL § 511(d)). The GBC asserts that the proposed sale would in fact violate the Bylaws as it would require unnecessary removal and relocation of the Deity. The relocation of Bharati Center also allegedly contravenes the purpose of the corporation according to Article II, Section 2 of the Bharati Center Bylaws⁵ by removing the congregation from central Downtown Brooklyn, an ideal location for ministerial and missionary work [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Finally, the GBC argues that the Petition must be denied because it contains no specific locations, budgets, timelines, or personnel. The GBC asserts that approval of the sale without a detailed plan would put the interests of the congregation and corporation at risk [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

⁴The GBC asserts that it first learned of the proposed transaction between Bharati Center and EF Equities from Britten in 2016. It denies previously approving the sale and characterizes the resolutions issued in 1998 and 2008 as “general (non-specific) consent” given when conditions in Downtown Brooklyn were “dramatically different” from those present today. As a result, the GBC argues that contrary to Petitioner’s assertions, the GBC never approved the sale [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

⁵Article II, Section 2 provides as one of Bharati Center’s purposes: “[t]o expand the glorification of the Deity by preaching Krishna Consciousness through the distribution of literature [and] holding of public festivals . . .” [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The 2017 Board also filed an answer with objections in opposition to the Petition. They argue that the members of the Original Board were rightfully removed by the GBC (as the ultimate ecclesiastical authority and highest governing body of ISKCON) and challenge the authority of the Original Board to file and maintain the Petition. The directors also claim that the proposed sale as set forth in the Petition is harmful to the mission of ISKCON and contrary to the interest of the congregants. They reiterate arguments that repair estimates cited by Petitioner are not reliable, that the move will deny congregants a place to worship for an indeterminate period of time, and that no suitable permanent site for worship has been secured [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

In addition to their objections to the Petition, the GBC, ISKCON, and the 2017 Board filed a separate action for declaratory and injunctive relief under Index number 524895/2017 against the Original Board and Petitioner's attorneys, Mark J. Weinstein, Esq. and Finder Novick Kerrigan LLP. In the complaint, the GBC and ISKCON seek, *inter alia*, an injunction enjoining the Original Board from taking any steps to sell Bharati Center's real property or disaffiliate the Brooklyn Temple from the GBC and ISKCON. They are also seeking a declaratory judgment that the 2017 Board is the duly elected, rightful representative of Bharati Center [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

A group of congregants of the Brooklyn Temple filed a separate response to the Petition objecting that the proposed sale will have a negative impact on the congregation. They allege that Britten abused his authority as temple president by banning members who opposed the sale. They also point out that the movement of the Deity is a violation of the teachings of Prabhupada and the Hare Krishna faith [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

On January 4, 2018, the OAG filed an affidavit of objection. The affidavit notes that, prior to the filing of the Petition, the OAG declined to issue a "no objection" letter to the requested relief on the ground it received numerous complaints related to whether, pursuant to the Bharati Center's governing documents, each of the duly-constituted and necessary governing bodies of Bharati Center consented to the sale and use of proceeds. There were also objections related to whether the sale is in the best interest of Bharati Center. With respect to the use of proceeds, the OAG noted that it is unusual in a transaction involving a sale of property of a large religious corporation not to set forth a clear plan to move religious artifacts and establish a transitional house of worship. The OAG further advised that the Petition lacks a clear outline for the development of a permanent new house of worship with the proceeds. As a result, the OAG recommended that the Court deny Petitioner's request for approval [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

In reply to the objections of the respondents, Petitioner argues that it is in compliance with all pertinent requirements regarding the disposition of real property, including those contained in the RCL, N-PCL, and internal governing documents of Bharati Center [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

First, Petitioner challenges ISKCON and the GBC's claim that either entity has the authority to remove members of Bharati Center's Board of Directors. Bharati Center asserts that, although the corporation must

follow the teachings of Prabhupada, it is financially, legally, and managerially independent of ISKCON. In support, Petitioner cites Article III, Section 2 (“Relationship with ISKCON”) of its Bylaws. Bharati Center also argues that Article V, Section 5 of its Bylaws, regarding the removal of directors, provides that a director may be removed only by a two-thirds vote of the balance of the remaining directors. Petitioner notes that there is no provision in the Bylaws for the removal of directors by ISKCON or the GBC. Therefore, Bharati Center argues, neither ISKCON nor the GBC have authority to remove any directors or officers of Bharati Center [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Second, Petitioner asserts that, under the neutral principles of law analysis, the secular documents related to the Brooklyn Temple indicate that Bharati Center possesses the sole authority to dispose of the property. Bharati Center claims that the plain language of the Bylaws establishes a delineated relationship between Bharati Center and ISKCON in which the GBC and ISKCON merely provide guidance on ecclesiastical policy. It argues that the procedure regarding the special vote of reconsideration memorialized in Article IX, Section 7(B)⁶ demonstrates that final decision-making authority regarding any real property transaction rests with the Bharati Center. Petitioner argues that this subsection establishes a veto power in favor of the Bharati Center Board. Read in conjunction with Article III, Section 2 (discussing the financial and legal independence of the corporation), Petitioner argues that the Bharati Center Board maintains absolute authority over operational aspects of the temple. Petitioner also points out that the deed to the Brooklyn Temple is held by Bharati Center [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Petitioner argues that the *Kelley* case is distinct from this case in that the deed to the Brooklyn Temple is in the name of Bharati Center. The deed to the Freeport temple in *Kelley* remained with ISKCON (see *Kelley v Garuda*, at *9). Bharati Center asserts that *Kelley* also differs in that the ISKCON bylaws relied upon by Justice Marber as evidence that the property was held in trust for the benefit of ISKCON were adopted prior to the “Defendants’ ‘takeover’ of the Freeport Temple” (*Id.* at *16). Here, the operative Bylaws were adopted in 1987 after the purchase of the Brooklyn Temple, and, according to Petitioner, therefore compel a different conclusion. Petitioner also notes that the *Kelley* decision is not binding on this Court and is currently being appealed [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Lastly, Petitioner’s reply reiterates arguments that the proposed sale of the Brooklyn Temple to EF Equities as contemplated by the Agreement of Sale is fair and equitable and promotes the purposes of the corporation and interests of its members (see *Church of God of Prospect Plaza v Fourth Church of Christ, Scientist, of Brooklyn*, 76 AD2d 712, 713 [2d Dept 1980]) [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

⁶As discussed above, Section 7(B) provides:

“[s]hould the GBC or its subcommittee advise against such sale (or relocation), the Board of Directors must reconsider such a resolution at its next meeting. If any one member of the Board of Directors votes against the resolution during such reconsideration, then the original resolution should be considered null and void” [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

DISCUSSION

The First Amendment, applicable to the states by the Fourteenth, prohibits the making of “laws respecting an establishment of religion, or prohibiting the free exercise thereof” (*First Presbyt. Church of Schenectady v United Presbyt. Church in U.S.*, 62 NY2d 110, 116 [1984], quoting *U.S. Const., 1st Amend.*). Consistent with these restrictions, secular courts are forbidden from interfering in or resolving “church property disputes on the basis of religious doctrine and practice” (*Jones v Wolf*, 443 US 595, 601 [1979]; see also *Serbian Eastern Orthodox Diocese v Milivojevich*, 426 US 696, 709 [1976]).

The First Amendment permits religious organizations “to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters” (*Kelley v Garuda*, 2017 NY Slip Op at *14, quoting *Serbian Eastern Orthodox Diocese for United States and Canada v Milivojevich*, 426 US at 724). As such, the role of secular courts is carefully circumscribed (*Presbyt. Church in U.S. v Mary Elizabeth Blue Hull Mem. Presbyt. Church*, 393 US 440, 449 [1969]; *Jones v Wolf*, at 602). Nonetheless, a “State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively” (*Jones v Wolf*, at 602).

There are two forms of church government in the context of litigation involving religious institutions: the hierarchical form and congregational form (*Watson v Jones*, at 722). In a hierarchical church organization, authority is vested in the first instance to the governing body of the local church, but its actions are subject to review and control by a higher church body, in ascending order of authority (*First Presbyt. Church of Schenectady v United Presbyt. Church*, at 114; *Kelley v Garuda*, at *14). A congregational form differs in that the local church, independent of higher church authority, remains free to make its own decisions (*Watson v Jones*, at 722).

The Supreme Court’s basic constitutional approach whereby a court defers to the decisions of the highest tribunal of a hierarchical religious organization on matters of religious doctrine was established in *Watson v Jones* and its progeny. In *Watson*, the Supreme Court emphasized that

“where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete [and] whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them” (*Watson v Jones*, at 727).

This language forms the basis of the “complete deference” standard of review (*First Presbyt. Church of Schenectady v United Presbyt. Church*, at 119, citing *Gonzalez v Archbishop*, 280 US 1, 16 [1929]).

Notwithstanding this standard, secular courts may still intercede to decide religious property disputes if they can do so without resolving underlying controversies on the basis of religious doctrine (*Jones v Wolf*, at 602, quoting *Maryland & Va. Churches v Sharpsburg Church*, 396 US 367, 368 [1970]; *Presbyt. Church in U.S. v Mary Elizabeth Blue Hull Mem. Presbyt. Church*, at 449; *Park Slope Jewish Ctr. v Congregation B’Nai Jacob*, 90 NY2d 517, 521 [1997]). This line of cases set forth the “neutral principles of law” approach as a means to adjudicate religious disputes by examining a religious organization’s governing documents and

other documentary evidence to ascertain the objective intention of the parties (*First Presbyt. Church of Schenectady v United Presbyt. Church*, at 121).

This analysis was adopted by the Court of Appeals in *First Presbyt. Church of Schenectady v United Presbyt. Church*. *First Presbyterian* involved a property dispute between a local Presbyterian church (First Presbyterian Church of Schenectady) and its denominational church organization (the United Presbyterian Church in the United States of America) (62 NY2d at 113). First Presbyterian commenced the action seeking a declaration of its independent status and a permanent injunction preventing the national church from interfering with its use and enjoyment of church property (*id.* at 114–115). The issue before the Court was whether, consistent with the neutral principles of law approach and the First Amendment, the Court was permitted to adjudicate the dispute between the two church organizations (*id.* at 113).

Though it declined to address the matter of the local church's independent status, the Court of Appeals concluded that the request for injunctive relief concerning First Presbyterian's use and enjoyment of the subject real property was susceptible to judicial determination using the neutral principles of law approach (*id.* at 117). The Court examined the language of the relevant deed, local church charter, state statutes, and the governing documents of the general church to discern the objective intent of the parties and determine whether the local church property was held in trust for the general church (*id.* at 122). Specifically, the Court found that there was no express language in the deeds regarding a trust in favor of the national church, no language in the local charter regarding the holding of property, and that the national church's governing documents did not impose an express trust or similar restriction on the use and control of local church property (*id.*).

The Court then examined the same evidence to see if it could determine whether there was an intent to create an implied trust in favor of the national church (*id.* at 125). The Court found that there was insufficient evidence to establish an implied trust (*id.*). Specifically, the Court noted that there were no resolutions, no commitment in writing, and no notice given to the local church (*id.*). Mere affiliation with the national denomination was not enough to support a finding that an implied trust was created (*id.*).

In 2008, the Court of Appeals addressed the same issue in *Episcopal Diocese of Rochester v Harnish* (11 NY3d 340 [2008]), where the Court affirmed the existence of a trust over the property of a local parish in favor of its diocese based on the religious organization's constitution and body of laws. Due to serious theological differences, the diocese declared the parish was extinct and resolved that its assets should be transferred to the diocese (*id.* at 341). Plaintiffs (the diocese and national church) then commenced the action seeking declaratory judgment that the property was held subject to a trust in favor of the diocese and national church (*id.*).

The Court of Appeals first examined whether there was any provision in the certificate of incorporation or deed (which was in the name of the local parish) that established an express trust in favor of the diocese and national church (*id.* at 351–352). The Court found that neither document conclusively expressed the intent that the subject property was held in trust. The constitution and body of laws of the national denomination (referred to as the "Dennis Canons") were found to be dispositive (*id.* at 351). The Dennis Canons provided that the real property of local parishes was held in trust for the national church and diocese in which it was located (*id.* at 348–349). Moreover, when the parish (which was originally independent) became affiliated with the greater church, it agreed to abide by and conform to the church's constitution and canons (*id.* at 348). The Court of Appeals also noted that the charter of the parish provided that it would function as a part of the greater church (*id.* at 352).

The parish further argued that they could not be bound by the Dennis Canons because they were adopted nearly twenty years after the local church was accepted as a parish (*id.* at 352). The Court of Appeals rejected this argument, holding that, in agreeing to abide by all “canonical and legal enactments,” the parish was bound by the rules regarding real property (*id.*). It was also found significant that the parish failed to object to the applicability of the sections in the intervening years (*id.*). The Court similarly rejected the parish’s assertion that it had retained a veto power, noting that it would be inconsistent with the hierarchical structure of the organization and nature of the affiliation (*id.*).

The Second Department recently decided a similar case in which the court found a trust in favor of the national Presbyterian church despite the fact that the deed to the property at issue was held by the local church (*Presbytery of Hudson River of Presbyt. Church v Trustees of First Presbyt. Church and Congregation*, 72 AD3d 78, 91 [2d Dept 2010]). It was noted that the certificate of incorporation was also silent on the issue (*id.* at 94). The court ultimately concluded, however, that the greater church’s book of laws was controlling, as it contained language creating an express trust in favor of the national church (*id.* at 83-84). The national church also presented proof of resolutions of the local church resolving that the local church was required to follow the teachings of the greater church (*id.* at 97).

Similar to this case, the local church sought the permission of the governing body of the national church to sell the real property at issue pursuant to two pertinent sections of the book of laws (*id.* at 95). The court held that, by seeking permission from the parent organization to sell property, the local church showed that it intended to create a trust, or believed that a trust was already in existence, such that the property to which it purportedly held legal title was properly under the control and held for the benefit of the national organization (*id.* at 97-98).

Based on the foregoing principles, the Court finds that this case may be decided using neutral principles of law and, under this doctrine, that the Brooklyn Temple is held in trust for ISKCON [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

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*, 2017 NY Slip Op at *16). ISKCON’s top-down government structure is evidenced by Prabhupada’s writings, the internal governing documents of Bharati Center, and the laws of the greater organization as memorialized in the resolutions of the GBC and ISKCON Law Book. Prabhupada’s intent that the GBC act as ultimate managing authority for the growing Hare Krishna faith is apparent in both the Will and writings. The Bharati Center Bylaws further illustrate ISKCON’s hierarchical nature and authority of the GBC. Multiple sections, including those in Article II (regarding the purpose of Bharati Center) and Article III (providing that the GBC establishes policy guidelines which Bharati Center must follow), further suggest that the GBC has authority over ISKCON member temples. Justice Marber similarly concluded that the bylaws for the Freeport temple “unequivocally set forth that the GBC is the highest governing body of ISKCON” (*id.*) [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Accordingly, under the complete deference standard derived from *Watson v Jones* and its progeny, the GBC’s enactments regarding religious and ecclesiastical matters, including membership and discipline (*Park Slope Jewish Ctr. v Stern*, 128 AD2d 847, 848 [2d Dept 1987]), will not be disturbed by this Court. 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 [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Applying the neutral principles of law approach, the Court finds that the documentary evidence submitted by the parties, including the deed, governing documents of Bharati Center and ISKCON, certificate of incorporation, and Prabhupada's writings, demonstrates that the objective intent of the parties was to establish an express trust in favor of ISKCON [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The Bharati Center Bylaws specifically address transactions involving the real property assets of local temples in Article IX, Section 7. Section 7 provides that the Bharati Center 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 (or relocation of the Diety [sic])" [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Further evidence of ISKCON's ownership and control over the Brooklyn Temple may be found in the ISKCON Law Book (analogous to the Dennis Canons in *Harnish*), which creates an express trust in favor of ISKCON under the control of the GBC. As discussed above, Section 10.4.4 of the ISKCON Law Book requires that member temples hold real property and other assets for the benefit of ISKCON under the administration of the GBC (*see Kelley v Garuda*, at *17). The same section prohibits alienation of temple property without the expressed written consent of the GBC or its representatives (*id.*). The GBC is also specifically vested with veto power over any proposed sale, mortgage, transfer, encumbrance or lease in Section 10.4.4 (*id.*) [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Bharati Center is required to abide by the Bylaws and aforementioned governing documents, including those rules limiting the use and control of real property. 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. The fact that Bharati Center in fact sought the permission of the GBC is further evidence of this under controlling New York Case law (*Presbytery of Hudson River of Presbyt. Church v Trustees of First Presbyt. Church and Congregation*, at 97) [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The GBC's general discussion of the sale in resolutions in 1998 and 2008 is not a substitute for approval of the proposed sale to EF Equities as contemplated by the 2015 Agreement of Sale. Even if the aforesaid resolutions satisfied the various provisions requiring GBC approval of the sale, the ISKCON Law Book expressly provides for a veto power in favor of the GBC. The GBC clearly expressed its disapproval of the sale in at least three resolutions issued following meetings of the GBC Body. The GBC's appointed committee also advised against the sale [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The Court rejects Petitioner's efforts to distinguish *Kelley v Garuda*. The mere fact that, in this case, the deed is in the name of Bharati Center does not preclude the finding of a trust in favor of ISKCON in light of the substantial body of evidence suggesting the opposite (see *Presbytery of Hudson River of Presbyt. Church v Trustees of First Presbyt. Church and Congregation*, at 91; *Episcopal Diocese of Rochester v Harnish*, 11 NY3d at 351). Similarly, the fact that the controlling Bylaws were passed subsequent to the organization of Bharati Center or purchase of the Brooklyn Temple does not change the outcome of this case. The Court of Appeals specifically rejected this argument in *Episcopal Diocese of Rochester v Harnish*. Moreover, there is no evidence that Bharati Center objected to the provisions regarding control of real property prior to the subject litigation [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

In addition to the lack of approval of the GBC, the Petition is deficient because of Bharati Center's failure to satisfy the requirements of N-PCL § 511(d) [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

To protect the beneficiaries of charitable organizations from "loss through unwise bargains" or misuse of corporate assets, the N-PCL requires certain nonprofit corporations to obtain judicial approval before selling or disposing of all or substantially all of its assets, including real property (*Congregation Nachlas Jacob Anshe Sfard of Jackson Heights v Schwarz*, 152 AD3d 647, 647 [2d Dept 2017], quoting *Church of God of Prospect Plaza v Fourth Church of Christ, Scientist, of Brooklyn*, 76 AD2d at 716). To obtain judicial approval, the petitioner must submit a verified petition to the court where the corporation's office or principal place of business is located (see N-PCL § 511(a); RCL § 12(1)).

The court may authorize the proposed transaction if it appears to its satisfaction that "the consideration and terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interest of the members will be promoted" (N-PCL § 511(d); see also *64th Associates, LLC v Manhattan Eye, Ear & Throat Hosp.*, 2 NY3d 585, 590 [2004]). The primary purpose for requiring that not-for-profit corporations secure court approval before assets are sold is to protect the members of the corporation "from loss through unwise bargains" or misuse of corporate assets (*Church of God of Prospect Plaza v Fourth Church of Christ, Scientist, of Brooklyn*, at 716).

As noted in the affidavit of objection filed by the OAG, the Petition and supporting documentation present serious questions regarding whether the proposed transaction is reasonable and in furtherance of Bharati Center's purpose and interest of its members. Neither the Petition itself nor the affirmations and affidavits in support specify any suitable permanent or temporary site for worship or assembly of the congregation. The Petition similarly lacks any concrete details regarding a proposed timeline and budget for the sale or plan for the relocation of Bharati Center's religious artifacts. The agreement and amendments with EF Equities are also silent on these matters [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

The Petition contains only vague and conclusory statements that Petitioner has "located possible sites for an interim location" and that it will take two to three years to acquire, renovate, or construct a new location for the congregation. The only potential site discussed in the Petition was abandoned with the revocation of the Second Amendment to the Agreement of Sale in August 2016, with no reason provided other than

Petitioner's desire to explore other options [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Petitioner's assertions regarding the necessity of relocating to ensure the continued viability of the congregation are speculative, unsubstantiated, and disputed by respondents [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Moreover, if, as respondents allege, the resolutions to sell the property were issued following improperly constituted corporate meetings by directors previously removed in accordance with the governing documents and laws of ISKCON, then the purposes of the corporation and the interest of its members would not be served (*In re Standup Harlem, Inc.*, 1 Misc 3d 904(A), 2003 NY Slip Op 51494[U] at *6 [Sup Ct, NY County 2003] (concluding that the purpose of the corporation and interests of its members would not be promoted by resolutions to sell real property that were the result of improperly constituted meetings of the board) [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

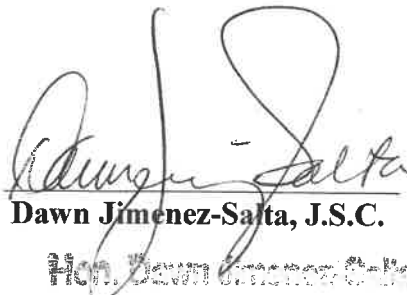
For these reasons, the Court concludes that Petitioner failed to establish that the transaction is reasonable and that it promotes the interest of Bharati Center and its members (*see Congregation Yetev Lev D'Satmar Kiryas Joel, Inc. v Congregation Yetev Lev D'Satmar, Inc.*, 9 NY3d 297, 301 [2007]; *cf. In re Sculpture Ctr., Inc.*, 2001 NY Slip Op 40368[U] at *8 [Sup Ct, NY County 2001] (holding that the proposed relocation promoted the purposes of the not-for-profit corporation after review of the petition, which contained a detailed discussion of the characteristics of the proposed new building and its features) [Petitioner 1, Exh. A-W; Petitioner 2; Respondent GBC 3, Exh. A-C; Respondent Board 4, Exh. A; Intervener-Members 5, Exh. A-E; Attorney General 6; Respondent Board 7; Petitioner 8, Exh. A-J].

Based on the foregoing, it is hereby ORDERED as follows:

The Court denies approval of the sale and Bharati Center's petition for judicial approval of the sale of the real property located at 295-305 Schermerhorn Street, Brooklyn, New York 11217 is DISMISSED.

This constitutes the Decision and Order of the court.

Date: April 17, 2018
Matter of the Application of Bharati Center Inc.
(Index Number 2855/17)


Dawn Jimenez-Salta, J.S.C.