

Short Form Order

Index No. 608259/2019

SUPREME COURT – STATE OF NEW YORK  
PART 55 - SUFFOLK COUNTY

**PRESENT:**

Hon. George Nolan  
Justice Supreme Court

\_\_\_\_\_  
J. CHRISTOPHER HARING,

Plaintiff,

-against-

CAROLINE CHURCH OF BROOKHAVEN,  
REVEREND CANON RICHARD D. VISCONTI,  
AS RECTOR OF THE CAROLINE CHURCH  
OF BROOKHAVEN, MARK LaSORSA, AS  
SENIOR CHURCHWARDEN, BARBARA  
RUSSELL, AS JUNIOR CHURCHWARDEN,  
NICK AMATO, CAROLYN MARTEZIAN,  
WILLIAM RHAME, MIRJANA ELLIS,  
WILLIAM HARVEY, MARY WUESTE,  
SUSAN RYDZESKI, JACKIE HULL and  
FRANK WEILAND, AS MEMBERS OF THE  
VESTRY OF THE CAROLINE CHURCH OF  
BROOKHAVEN, EPISCOPAL DIOCESE OF  
LONG ISLAND, RIGHT REVEREND  
LAWRENCE C. PROVENZANO, AS BISHOP  
OF THE EPISCOPAL DIOCESE OF LONG  
ISLAND, and LETICIA JAMES, AS  
ATTORNEY GENERAL OF THE STATE OF  
NEW YORK,

Defendants.

Mot. Seq. No. #001 - MG case disp  
Orig. Return Date: 09/19/2019  
Mot. Submit Date: 01/30/2020

**PLAINTIFF'S ATTORNEY**  
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BROOKHAVEN, REVEREND CANON  
RICHARD D. VISCONTI, AS RECTOR OF  
THE CAROLINE CHURCH OF  
BROOKHAVEN, MARK LaSORSA, AS  
SENIOR CHURCHWARDEN, BARBARA  
RUSSELL, AS JUNIOR  
CHURCHWARDEN, NICK AMATO,  
CAROLYN MARTEZIAN, WILLIAM  
RHAME, MIRJANA ELLIS, WILLIAM  
HARVEY, MARY WUESTE, SUSAN  
RYDZESKI, JACKIE HULL and FRANK  
WEILAND, AS MEMBERS OF THE  
VESTRY OF THE CAROLINE CHURCH  
OF BROOKHAVEN

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Upon the e-filed documents numbered 04 through 35, and upon due deliberation and consideration by the Court of the foregoing papers, it is hereby

**ORDERED** that the motion by defendants Caroline Church of Brookhaven, Reverend Canon Richard D. Visconti, as Rector of the Caroline Church of Brookhaven, Mark LaSorsa, as Senior Churchwarden, Barbara Russell, as Junior Churchwarden, Nick Amato, Carolyn Martezian, William Rhame, Mirjana Ellis, William Harvey, Mary Wueste, Susan Rydzeski, Jackie Hull and Frank Weiland, as Members of the Vestry of the Caroline Church of Brookhaven (“Caroline Church defendants”) for an order pursuant to CPLR 3211 (a)(1), 3211(a)(3), 3211(a)(5), 3211 (a)(7) and 3211 (a)(11) dismissing the complaint is granted.

In this action for a declaratory judgment and injunctive relief, the plaintiff J. Christopher Haring challenges the transfer and consolidation of certain monies previously held by defendant Caroline Church of Brookhaven in four allegedly permanently restricted funds to a single account for the Church’s day-to-day operations. The Caroline Church defendants move pursuant to CPLR 3211 (a)(1), 3211(a)(3), 3211(a)(5), 3211 (a)(7) and 3211 (a)(11) alleging *inter alia* that plaintiff lacks standing to bring this action.

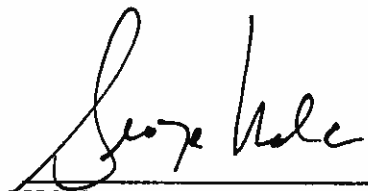
On a motion pursuant to CPLR 3211 (a)(5) to dismiss a complaint for lack of standing, “the burden is on the moving defendants to establish, *prima facie*, the plaintiff’s lack of standing, rather than on the plaintiff to affirmatively establish his standing in order for the motion to be denied [and] the motion will be defeated if the plaintiff’s submissions raise a question of fact as to his standing” (*Deutsche Bank Trust Co. Ams. v. Vitellas*, 131 AD3d 52, 59-60, 13 NYS3d 163, 170 [2015]). “Standing is a threshold determination, resting in part on policy considerations, that a person should be allowed access to the courts to adjudicate the merits of a particular dispute that satisfies the other justiciability criteria” (*Society of Plastics Indus. v. County of Suffolk*, 77 NY2d 761, 769, 570 NYS2d 778, 782 [1991]). Normally, standing to challenge actions by the trustees of a charitable organization or corporation is limited to the Attorney-General (*Alco Gravure Inc v. Knapp Foundation*, 64 NY2d 485 [1985]). However, a party challenging corporate action has standing if he shows that he would suffer direct harm (*i.e.*, injury-in-fact) that is in some way different from that of the public at large and, further, that the claimed harm is within the zone of interests protected by the statute or statutes alleged to have been violated (*id.*). As to the requirement of injury-in-fact, an allegation of close proximity alone may give rise to an inference of damage or injury that enables person to challenge an action without proof of actual injury (*Matter of Sun-Brite Car Wash v. Board of Zoning & Appeals of Town of N. Hempstead*, 69 NY2d 406, 515 NYS2d 418 [1987]). “The harm that is alleged must be specific to the individual who alleges it, and must be different in kind or degree from the public at large, but it need not be unique” (*Matter of Sierra Club v Village of Painted Post*, 26 NY3d 301, 311, 22 NYS3d 388, 392 [2015]).

Here, accepting as true the facts as stated in the complaint and in the plaintiff’s supporting affidavit (*see Matter of Schlemme v Planning Bd. of City of Poughkeepsie*, 118 AD3d 893, 988 NYS2d 640 [2014]; *Matter of Green Harbour Homeowners’ Assn. v Town of Lake George Planning Bd.*, 1 AD3d 744, 766 NYS2d 739 [2003]), the Court finds the claims of J. Christopher Haring insufficient to withstand dismissal as he lacks the requisite standing to bring this action. Plaintiff has not demonstrated that he has been injured by the consolidation of the church funds or

that he has an actual legal stake in these funds (*Society of Plastics Indus. v. County of Suffolk*, 77 NY2d 761, 769, 570 NYS2d 778, 782 [1991]). The court finds that the defendant's \$500 donation to the churchyard fund made in 2016 cannot be construed as an injury that confers jurisdiction given the change in the church bylaws that occurred in 2003. Moreover, defendant, in his individual capacity does not meet the minimum 5% of church members required to accord standing pursuant to N-PCL § 720(b)(3) to bring a derivative action on behalf of church members (*Segal v. Powers*, 180 Misc2d 57, 687 NYS2d 889 [Sup Ct, NY County 1999]). In view of plaintiff's lack of standing, the court need not address the parties' other arguments.

The foregoing constitutes the decision and Order of the Court.

ENTER

  
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HON. GEORGE NOLAN, J.S.C.

Date: February 27, 2020  
Riverhead, New York

FINAL DISPOSITION       NON-FINAL DISPOSITION