

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X Index No. 608259/2019

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,

AFFIDAVIT

Defendants.

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STATE OF NEW YORK)
)ss.
COUNTY OF SUFFOLK)

Rev. Canon Richard D. Visconti, being duly sworn, deposes and says that:

1. I am the Rector of the defendant Caroline Church of Brookhaven (hereinafter the "Church") and am fully familiar with the facts relating to the plaintiff's claims. I make this affidavit in support of the defendant's motion to dismiss the complaint in this matter. A copy of the complaint is annexed hereto as Exhibit A.
2. I have been the duly appointed Rector of the Caroline Church of Brookhaven for over seventeen years.

3. Plaintiff's complaint seeks certain relief, mainly regarding the transfer of moneys from the Church's Remembrance Fund, Building Fund, Organ Fund, and Churchyard Fund (collectively, the "Funds").
4. To the best of my knowledge, these Funds were not created by donors or any individual or group of members of the Church, but rather the Funds were created by the Church's Vestry, our governing body.
5. At the time my tenure as Rector began in 2002, the Caroline Church was operating under by-laws that were last revised in 1985.
6. During 2003, the Church's Vestry began discussions and the consideration to amend the Church's by-laws.
7. As alleged in the plaintiff's complaint, he was a member of the Vestry and the treasurer at the time the amendments to the by-laws were being discussed and considered in 2003. It is also my understanding that the plaintiff was in 2003, and still is an attorney admitted to the bar and licensed to practice law in the state of New York. Plaintiff is no longer a member of the Church's Vestry.
8. Plaintiff was instrumental in advising the Church's Vestry and the drafting of the amendments to the by-laws in 2003.
9. In fact, plaintiff drafted the final version of the 2003 amended by-laws, a copy of which are annexed to these motion papers as Exhibit B.
10. In December of 2003, the Church's Vestry, together with myself and the two Churchwardens, voted to amend the by-laws, and these 2003 by-laws were adopted by the Church.

11. Again, plaintiff was a voting member of the vestry in December 2003, and in fact voted for these adopted by-law amendments, after drafting the amendments.
12. As relevant to this litigation, and as amended in December of 2003, Article III, Section 2, Paragraph "C" of the by-laws indicates, with regard to Inter-fund Transfer of Fund Earnings:

“Unless otherwise restricted by the fund itself, annual earnings from funds may, by December 31 of the following fiscal year, be transferred to another fund maintained by the Church. Any transfer must be approved by a majority vote of the Vestry within the time specified in the preceding sentence. After that time, any said earnings of the fund shall be considered and may only be transferred in accordance with paragraph D, below. The term “earnings” includes interest, dividends and appreciation in the market value of the investment.” (Ex. B, p. 5)
13. As relevant to this litigation, and as amended in December of 2003, Article II, Section 2, Paragraph "D", Subparagraph (1) of the by-laws indicates, with regard to the Inter-fund transfer of Fund Principal:

“The Vestry may approve the transfer of monies from one fund to another in order to meet an important need of the Church, unless such transfer is prohibited or restricted by the document(s) which established the fund. Any such transfer shall require a total of nine votes of the Rector, Churchwardens and Vestrypersons (affirmative votes to include the Rector and one Churchwarden). Any such transfer shall specify that it is to be considered a transfer without restriction, or a transfer to be carried on the financial records as a liability in favor of the fund from which the monies were transferred, and in the later circumstance the Vestry shall make every effort to raise funds to reimburse the fund within a reasonable time.” (Ex. B., p. 5)
14. Despite drafting and voting in favor of these amendments which permit the Vestry of the Church to transfer funds after a vote, plaintiff now, over 15 years later seeks to challenge these amended by-laws and the transfers of moneys between Church funds and accounts specifically authorized by them.
15. Plaintiff does not, and cannot allege in his complaint that any of the transfers were without the required vote of the Church, Vestry, Churchwardens or Rector.

16. Plaintiff does not, and cannot allege in his complaint that any transfer approved by the Church was prohibited or restricted “by the document(s) which established the fund” (emphasis added).
17. The by-laws were subsequently amended by the Vestry of the Church in 2013, when plaintiff was again a member of the Vestry and a Churchwarden, without any change to the sections referred to above, or any suggestion by plaintiff to amend the section cited above, or any suggestion by plaintiff to disallow the Church’s ability to transfer funds after a vote of the Vestry.
18. Plaintiff does not allege that he took any part in establishing any of the Funds. Plaintiff does not allege that he personally donated and affirmatively placed any restrictions on the Funds, nor that he had the authority or standing to do so. He does, however, allege that in June 2016 he made a \$500 donation to the Churchyard Fund, over 12 years after he drafted and voted for the by-laws that permitted the transfer of moneys between Church funds. To say that plaintiff was on notice that his \$500 donation could be transferred to another Church fund is an understatement.
19. Plaintiff alleges that he is a member and communicant in good standing of the “Protestant Episcopal Church in the United States of America.” While I have been advised that the defendants must accept the allegations in the complaint as true at this stage of the legal proceedings, plaintiff is not in fact in good standing at the Caroline Church of Brookhaven.

20. In order to be a communicant in good standing at our Church, one must receive “Holy Communion in the church at least three times during the preceding year, and for the previous year be faithful in corporate worship, unless for good cause prevented, and have been faithful in working, praying and giving for the spread of the Kingdom of God.”¹
21. I have officiated all Saturday evening and Sunday worship services throughout the entire year of 2018 and 2019 (to date). I have not seen plaintiff attend or receive Holy Communion at any of these services in 2018 and 2019, nor has he made any financial contributions, donations, or pledges to the Church during any point in 2018 or 2019 through the date of his complaint (April 26, 2019). These factors alone would bar him from being considered a communicant in “good standing” in the Caroline Church of Brookhaven.
22. Regardless of whether plaintiff’s allegations must be accepted as true for the purpose of this motion to dismiss, plaintiff would still only be one member out of 749 active current baptized members of the Church, or one out of 685 communicants of the Church in good standing.
23. Plaintiff is a single purported member of the Church, no longer a member of the Vestry. It cannot be disputed that all actions by the Church, including the amendment of the by-laws in 2003 and subsequent transfer of funds were duly voted on and approved by the Church’s Vestry and Churchwardens. It also cannot be disputed that the single purported member now challenging the actions

¹ “Communicant” and “Communicants in Good Standing” are defined in the Episcopal Diocese of Long Island Constitution, Canons and Rules of Order. To avoid unnecessarily burdensome exhibits, Annexed as Exhibit C is the cover page, and pages 6-7 from said document in which Canon II, Section II defines said terms.

of the Church was instrumental in passing the very by-laws that he now challenges.

- 24. For the reasons set forth above, I ask this Court to dismiss the complaint in its entirety, as the plaintiff lacks standing, as the claims are barred by the statute of limitations, and because the complaint does not and cannot sufficiently allege that any of the Church's funds were restricted.

Richard D. Visconti

 REV. CANON RICHARD D. VISCONTI

Sworn to before me this 12th day of August, 2019

Edward J. Vitale

 Notary Public
 EDWARD J. VITALE
 Notary Public, State of New York
 No. 0215020366
 Qualified in Suffolk County
 Commission Expires April 4, 2022