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Court Can't Rule on Lutheran Church's Challenges to National Administration's Property Takeover

By **Jason Grant**
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The court pointed out that the in-dispute takeover can only be made with a finding that "the membership of a congregation has become so scattered or so diminished" that certain issues arise, such as the local church becoming "impractical for such a congregation to fulfill the purposes for which it was organized."

A Staten Island Lutheran church's legal challenges to the national church's "synodical administration" takeover of the local church and its property center on religious determinations that a secular court system cannot rule on, a state appeals court has decided.

The court also rejected a related argument made by the local church in its lawsuit—that its request for injunctive relief, at least, should be decided solely by using neutral principles of law. That position does not mean that the takeover was wrongful either, wrote the appellate panel, because under that analysis, the relevant fact is that the church did not disaffiliate with the Synod governing organization before the takeover happened.

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> **– JOSEPH MILANO**
> **CAPELL BARNETT MATALON & SCHOENFELD PARTNER IN MANHATTAN**

The unanimous Appellate Division, Second Department decision regarding the Eltingville Lutheran Church's action for declaratory and injunctive relief affirmed Richmond County Supreme Court Justice Alan Marin's dismissal of the entire action.

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Joseph Milano, a Capell Barnett Matalon & Schoenfeld partner in Manhattan, represented the defendants, including the Synod. In an email, Milano said the decision "was firmly grounded on two principles well established by the United States Supreme Court and the New York Court of Appeals that when uniting with a religious denomination, a local congregation consents to be bound by the ecclesiastical determinations of that denomination, subject only to such appeals as the denomination itself provides[.]"

He added that the First Amendment bars court intervention "because there is substantial danger that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs."

An attorney for Eltingville Lutheran Church, Allyn Crawford of Crawford Bringslid Vander Neut on Staten Island, declined to comment.

According to the Eltingville church's 2016-filed complaint, the church was organized pursuant to state Religious Corporations Law §10, and it existed pursuant to a written constitution and articles of organization, and was a member of the Evangelical Lutheran Church in America (ELCA).

The complaint further claimed that the church and its congregation were "valuable parts of its community" on Staten Island; had an average Sunday worship service attendance of 30 people; had about 80 active members; had cash assets of more than $350,000; and had day-to-day expenses that were being "timely met" by it.

The Eltingville church lodged its legal action against the defendants, including The Metropolitan New York Synod of the ELCA and its bishop, Robert Rimbo. In its first three claims, it sought a declaration that the Synod's takeover decision violated Religious Corporations Law §17-c and §13.24 of

the Synod's constitution, since the standards for synodical administration were not met, according to the panel's decision and the complaint.

In a fourth cause of action, the Eltingville church sought to enjoin the Synod from closing it, from seizing or taking control of its real or other property, and from interfering with its day-to-day operations, which included running church services and activities, and a school.

Marin did temporarily enjoin the defendants from imposing synodical administration, and from closing the church or interfering with operations, the panel noted.

The Synod and related defendants moved to dismiss the action, the panel then wrote, and in August 2018, Marin granted a full dismissal of the legal claims.

Addressing the first three causes of action regarding the sought-after declaration that synodical administration violated the Religious Corporations Law and the Synod's constitution, the panel first pointed out that "the First Amendment forbids civil courts from interfering in or determining religious disputes."

Moreover, wrote Justices Cheryl Chambers, Robert Miller, Hector LaSalle and Linda Christopher, "by uniting with a denominational body, a local congregation consents to be bound by the ecclesiastical determinations of the denominational government."

Still, "a court may resolve church property disputes 'when the case can be decided solely upon the application of neutral principles of … law, without reference to any religious principle,'" the justices noted, citing Matter of Congregation Yetev Lev D'Satmar v. Kahana, 9 N.Y.3d at 286, quoting Avitzur v. Avitzur, 58 N.Y.2d 108, 115.

They also noted that the in-dispute synodical administration could only be made with a finding that "the membership of a congregation has become so scattered or so diminished in numbers as to make it impractical for such a congregation to fulfill the purposes for which it was organized or that it is necessary for this synod to protect the congregation's property from waste and deterioration," quoting the Synod's Constitution §13.24 and citing Religious Corporations Law §17-c[2][a][iii].

The unanimous justices then wrote simply that "a Synod's determination to impose synodical administration on a local church is a nonjusticiable religious determination," while citing Matter of Metropolitan N.Y. Synod of the Evangelical Lutheran Church of Am. v. David, 95 A.D.3d 419.

The justices next focused on an Eltingville church contention pertaining to its injunction claim, in which the church argued, according to the justices, that assuming the Synod's takeover is "an ecclesiastical matter, the Supreme Court should not have directed dismissal of the [injunction remedy] … since the property issue may be resolved solely by reference to neutral principles of law."

The justices disagreed, writing that the ELCA and the Synod constitutions, and the relevant statute, "provide that, upon imposing synodical administration, a Synod may take charge and control of the local congregation's property."

Moreover, while the Eltingville church pointed to provisions of the constitutions involving a congregation that has disaffiliated with the ELCA and the Synod, those argued-for provisions "are not applicable … since it is clear that Eltingville had not disaffiliated with the Synod prior to the imposition of synodical administration," they said.

"Therefore, to the extent that the property issue may be determined by neutral principles of law," concluded the justices, "the governing church constitutions and relevant state statute establish that Eltingville is not entitled to the injunctive relief it seeks in the fourth cause of action."

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